

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF EDWARD V. MORSE, Ph.D.

23 Volume 1, Pages 1 - 349

24

25

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1                   (The following is the Deposition of EDWARD  
2 V. MORSE, Ph.D., taken pursuant to Notice of Taking  
3 Deposition, at the offices of Dorsey & Whitney,  
4 Attorneys at Law, 220 South Sixth Street,  
5 Minneapolis, Minnesota, on September 18, 1997,  
6 commencing at approximately 8:29 o'clock a.m.)

7 APPEARANCES:

8           On Behalf of the Plaintiffs:

9           William H. Manning  
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1           On Behalf of Philip Morris Incorporated:  
2           Julia J. Tyler  
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14 On Behalf of Lorillard Tobacco Company:

15 John C. Monica, Jr.  
16 Shook, Hardy & Bacon  
17 Attorneys at Law  
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24  
25

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1 E X A M I N A T I O N I N D E X

| 2 | WITNESS      | EXAMINED BY | PAGE |
|---|--------------|-------------|------|
| 3 | Edward Morse | Mr. Manning | 5    |

4

5 E X H I B I T I N D E X

| 6 | EXHIBIT | DESCRIPTION | PAGE |
|---|---------|-------------|------|
|---|---------|-------------|------|

|    |               |  |
|----|---------------|--|
| 7  | (Plaintiffs') |  |
| 8  | 4100          | Expert Report of Edward V. Morse, Ph.D., 42 pgs. |
| 9  |               |  |
| 10 | 4101          | Letter, Tyler to Walburn, Sept. 15, 1997, 4 pgs. |
| 11 |               |  |
| 12 |               |  |
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C O N F I D E N T I A L

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1 P R O C E E D I N G S  
2 (Witness sworn.)  
3 EDWARD V. MORSE  
4 called as a witness, being first duly sworn,  
5 was examined and testified as follows:  
6 ADVERSE EXAMINATION  
7 BY MR. MANNING:  
8 Q. Dr. Morse, my name is Bill Manning and I  
9 represent the state of Minnesota and Hubert H.

10 Humphrey III, its attorney general, and Blue Cross  
11 and Blue Shield of Minnesota. Do you understand  
12 that?

13 A. Yes.

14 Q. And you understand you are under oath here this  
15 morning?

16 A. Yes.

17 Q. And you have given depositions before?

18 A. Yes.

19 Q. A number of times?

20 A. Yes.

21 Q. You met with your lawyers prior to this  
22 deposition?

23 MS. TYLER: Objection to form.

24 MR. MANNING: Counsel, you understand form  
25 objections are not waived and you don't have to

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1 interrupt to say "form objection." Do you understand  
2 that?

3 MS. TYLER: I understand. I do object and  
4 I intend to.

5 MR. MANNING: Counsel, you understand that  
6 form objections are not waived, you don't have to  
7 interrupt to say "form objection," do you understand  
8 that?

9 MS. TYLER: I understand. Well, I do  
10 object, and I intend to.

11 MR. MANNING: Do you understand, that is my  
12 question.

13 MS. TYLER: No, I don't understand that.  
14 MR. MANNING: Then read the court order or  
15 talk to your lawyers who know more specifically the  
16 court order so you understand you don't need to  
17 interrupt with form objections -- okay? -- because I  
18 just I think you did acknowledge you did understand  
19 that.

20 MS. TYLER: Mr. Manning, I intend to object  
21 as appropriate and I will continue to object.

22 MR. MANNING: It's not appropriate to  
23 object to form objections.

24 MS. TYLER: That's your opinion.

25 MR. GINDER: Counsel, would you provide the

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1 court order that you are referencing that says it's  
2 inappropriate to object?

3 MR. MANNING: Yes, I'll be happy to. At  
4 some point I will but not right now.

5 MR. GINDER: You're wrong.

6 MR. MANNING: I'm not wrong.

7 BY MR. MANNING:

8 Q. Dr. Morse, you understand that the questions I  
9 ask, but, more importantly, the answers you give can  
10 be repeated to you in a court of law in front of a  
11 jury?

12 A. Yes.

13 Q. And you understand that if you don't understand  
14 a question I ask, you can ask me to repeat it.

15 A. Yes.

16 Q. Now you have written a report in this case; is  
17 that right?

18 A. Correct.

19 Q. And do you intend to attempt to give expert  
20 opinions in a court of law in this case?

21 MS. TYLER: Objection to form.

22 A. I'm sorry.

23 Q. Did you not hear the question?

24 A. I did not hear the question.

25 Q. Do you attempt -- Do you intend to attempt to

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1 give opinions in a court of law in this case?

2 A. If I'm asked, yes.

3 Q. And what are those opinions?

4 A. What are the opinions that I will be ready to  
5 testify to?

6 Q. Have you arrived here, sir, today at this  
7 deposition prepared to tell us what your opinions are  
8 in this case?

9 A. Yes.

10 Q. What are they?

11 MS. TYLER: Objection to form.

12 A. If I have a question, I will address it.

13 Q. The question is to you, sir, please list for the  
14 jury, ladies and gentlemen of the jury and the judge  
15 in this case, each and every one of your opinions in  
16 this case, please do so right now.

17 MS. TYLER: Objection to form.

18 A. I will address the -- if asked, will address the  
19 jury in terms of those variables, those factors that  
20 lead one to engage in high-risk behavior patterns,  
21 specifically health high-risk behavior patterns.

22 Q. Do you have any other opinions?

23 A. I will look at the fact -- the effects and the  
24 effectiveness of programmatic intervention for the  
25 reduction of teenagers smoking.

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1 Q. Are those the extent of your opinions, sir?

2 MS. TYLER: Objection to form.

3 A. That's rather broad so I think everything that I  
4 would say would fall within context of health risk  
5 behavior patterns and that's --

6 Q. I'm not asking you for everything you would say  
7 eventually. Please listen to my question so you are  
8 clear. I'm asking you right now as you've walked in  
9 here to this deposition, you told me you are prepared  
10 to give your expert opinions in this case, you intend  
11 to give them if asked. I've asked you to list every  
12 one of them. I won't ask again. Just list them for  
13 me, each and every opinion that you have,  
14 exhaustively, and I'll be quiet, and I'll write them  
15 down.

16 MS. TYLER: Objection to form. You have  
17 his expert report in front of you, why don't you read  
18 it if you have specific questions, ask --

19 MR. MANNING: Do you know about speaking  
20 objections, counsel, do you know about those?

21 MS. TYLER: I know about letting me finish



22 my objection.

23 (Interruption by the reporter.)

24 A. May I see a copy of my expert statement

25 submitted to you so that I might read it to you into

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1 the record? That's why I wrote it.

2 Q. Is -- Are you telling me that the way in which  
3 you would express your opinions is to read your  
4 expert opinion?

5 A. That would be fine.

6 Q. Is that what you are telling me?

7 A. That's what I told you.

8 Q. Okay. And you cannot right now, then, list for  
9 me the opinions that you intend to render in a court  
10 of law other than reading your expert opinion?

11 MS. TYLER: Objection to form.

12 Q. Your expert report?

13 MS. TYLER: Objection to form.

14 A. I've already provided you a -- an overview so  
15 that I can give you as complete an answer so that I  
16 do not distort my answer to you, so I answer as  
17 truthfully, as I was foresworn in court here to do.  
18 I would appreciate if I could have furnished to me my  
19 expert statement so I might read it to you, so it  
20 would be my fullest exposure to you.

21 Q. When is the first time you were contacted in  
22 this case, in this case, the Minnesota case?

23 A. Late spring.

24 Q. By who?  
25 A. Miss Julia Tyler.

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1 Q. Where were you contacted?  
2 A. In my office.  
3 Q. By phone?  
4 A. Uh-huh, yes.  
5 Q. Is that right?  
6 A. Yes.  
7 Q. I can't hear you. You have to answer out loud.  
8 A. Yes.  
9 Q. Okay. So Julia Tyler called you on the  
10 telephone?  
11 A. Uh-huh.  
12 Q. What did you see did you say in that telephone  
13 call?  
14 A. I responded to her request with regard to  
15 testifying in this case regarding high-risk health  
16 behavior patterns.  
17 Q. What was that response?  
18 MS. TYLER: Objection. Mr. Manning, you  
19 are not permitted pursuant to the stipulated order  
20 regarding expert depositions to inquire about the  
21 substance of communications between lawyer and  
22 expert, and you know that.  
23 MR. MANNING: That's not true. I'm  
24 entitled to know what he said.  
25 MS. TYLER: I'm instructing the witness not

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1 to respond if your response would involve disclosing  
2 the substance of our communications or the  
3 communications between you and any other attorney for  
4 the defendant tobacco companies.

5 And I would direct counsel to paragraph 11 of  
6 the stipulated order.

7 MR. MANNING: I'm going to read to you the  
8 last sentence of paragraph 11: In addition,  
9 questions relating to discussions among experts,  
10 including in the presence of counsel, shall be  
11 answered to the extent the question relates to  
12 statements by the experts and not by counsel.

13 MS. TYLER: Mr. Manning, I have two points  
14 to make with respect to that. That sentence involves  
15 discussions among experts. He has just communicated  
16 to you this was a conversation between an expert and  
17 myself.

18 Secondly, it is -- it shall be answered to the  
19 extent the question relates to statements by the  
20 expert and not by counsel. Your preceding question  
21 was what was my response, and I think you were  
22 calling for substance of my communications.  
23 Q. Let me be clear, sir. I don't want any comments  
24 of your lawyers, ever. Let me be clear about that.  
25 Nor do I in this question.

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1 In the conversation that occurred, what I want  
2 you to relate to me is what you said.

3 MS. TYLER: Objection.

4 Q. What you recall about what you said in the  
5 conversation.

6 MS. TYLER: Mr. Manning, I want to direct  
7 your attention to the first sentence of paragraph  
8 11. I will quote it: Neither side will inquire of  
9 the expert concerning the substance or content of any  
10 communication, advice or commentary between or among  
11 the expert and counsel who has retained or represents  
12 the clients retaining that expert.

13 And again I caution the witness not to disclose  
14 the substance of conversations between myself or  
15 counsel for any of the tobacco industries and  
16 yourself as experts retained thereby.

17 Q. How long did the conversation last?

18 A. Fifteen minutes, 10 minutes.

19 Q. When was the next contact you had related to the  
20 Minnesota case?

21 A. Without looking at my travel schedule, I would  
22 say sometime in May.

23 Q. Where is your travel schedule?

24 A. That's a good question. This is now September;  
25 it's probably nonexistent anymore.

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1 Q. Where do you usually keep your travel schedule?

2 A. In my office at home.

3 Q. And is that where the call came, to your office  
4 at home?  
5 A. Uh-huh.  
6 (Interruption by the reporter.)  
7 Q. You have to answer out loud.  
8 A. Yes.  
9 Q. You have been to a deposition before so you  
10 know, one, you have to answer audibly and, two, yes  
11 or no; correct?  
12 A. Yes.  
13 MS. TYLER: Objection to the form of the  
14 question.  
15 Q. Now, when is the next contact?  
16 That contact, that one you described to me in  
17 May, was it by telephone or in person?  
18 A. Telephone.  
19 Q. By who? Who was the contact?  
20 A. I was talking to Julia Tyler.  
21 Q. For how long?  
22 A. Couldn't have been more than a half hour because  
23 my cell phone had run out, so a half hour maximum.  
24 Q. How do you know it was on your cell phone?  
25 A. Because I was in the Fort Lauderdale airport

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1 standing in line at a Delta ticket office.  
2 Q. And you remember that?  
3 A. Pretty well burned in my mind, yes.  
4 Q. She call you, you call her?

5 A. She beat me.

6 Q. And it was the second time that you had had

7 contact with her on this case?

8 A. Uh-huh.

9 Q. Had you had contact with her before on other

10 cases?

11 A. Yes.

12 Q. Mississippi?

13 A. Yes.

14 Q. Florida?

15 A. Yes.

16 Q. So you knew her.

17 A. Yes.

18 Q. And you had met with her before in person.

19 A. Yes.

20 Q. So your -- The relationship, when she called you

21 by phone, you had a prior personal relationship,

22 shall we say, by way of a professional in-person

23 relationship?

24 A. Absolutely not.

25 Q. You had met with her before?

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1 A. I did not have a personal relationship with her.

2 Q. You had met with her personally?

3 A. I met with her professionally.

4 Q. On a -- But you had met with her face to face,

5 person to person?

6 A. Yes.

7 Q. Prior to your first contact with her on this

8 case, how many times had you met face to face?

9 A. I do not know.

10 Q. Can you estimate that for me?

11 A. I do not recall, do not remember.

12 Q. Can you give a range of whether that was --

13 A. I do not recall, do not remember.

14 Q. Listen to me, listen to the question.

15 A. Thank you.

16 Q. I know you are saying you cannot recall and do

17 not remember, but now you need to try to use your

18 best efforts when asked under oath to estimate. Was

19 it in excess of 10 times?

20 MS. TYLER: I object to the question. I

21 believe you are asking him to speculate.

22 Q. Was it in excess --

23 A. I do not remember.

24 Q. Was it in excess of five times?

25 MR. TYLER: Objection, asked and answered.

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17

1 A. I do not remember.

2 MS. TYLER: You need to let me finish.

3 THE WITNESS: I'm sorry.

4 Q. Now was it in excess of one time?

5 MS. TYLER: Objection, asked and answered.

6 A. I do not remember.

7 Q. All right. That's good. Now when is the next

8 contact you had after your contact at the airport in

9 Fort Lauderdale in May?

10 A. Within the last few weeks.  
11 Q. And was that by phone?  
12 A. By phone.  
13 Q. And where did that conversation take place,  
14 where were you?  
15 A. My office.  
16 Q. And how long did that last?  
17 A. Not very long.  
18 Q. Do you remember?  
19 A. Ten minutes, 15 minutes.  
20 Q. And when was the next contact?  
21 A. Three days ago.  
22 Q. And where was that?  
23 A. In my office.  
24 Q. By telephone?  
25 A. Telephone.

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C O N F I D E N T I A L

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1 Q. Who was that?  
2 A. I'm sorry?  
3 Q. Who was that with?  
4 A. Julia Tyler.  
5 Q. Have you had any contact in the Minnesota case  
6 prior to three days ago with anybody else besides  
7 Julia Tyler?  
8 A. Yes.  
9 Q. Who?  
10 A. Allen Purvis.  
11 Q. Who else?  
12 A. John.



13 Q. John who?  
14 A. I don't recall his last name at the moment.  
15 Q. Who else?  
16 A. No one that I can recall.  
17 Q. Were those contacts with Allen Purvis or John by  
18 telephone or were they in person or both?  
19 A. Both.  
20 Q. Okay. When were the -- When was the first  
21 meeting that you had with Allen Purvis or John  
22 related to this case?  
23 MS. TYLER: Objection to form.  
24 A. Yesterday morning.  
25 Q. And where was that?

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1 A. In this building.  
2 Q. When did you fly in?  
3 A. Tuesday evening.  
4 Q. So you -- How long did you meet here yesterday?  
5 A. Seven, eight hours.  
6 Q. You met with Allen Purvis?  
7 A. Uh-huh.  
8 Q. John?  
9 A. Uh-huh.  
10 Q. Julia Tyler?  
11 A. Uh-huh.  
12 Q. Who else?  
13 A. No one else -- No, no. There is a gentleman at  
14 the end of the table who was in the room for a period

15 of time.

16 Q. He was in and out of the meeting?

17 A. Yes.

18 Q. Now you knew everyone in the room except for the

19 gentlemen at the end of table here?

20 A. And I didn't know John.

21 Q. Pardon me?

22 A. I didn't know John.

23 Q. And the reason you knew Allen Purvis is that he

24 had previously defended a deposition you gave in

25 another case?

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1 A. I'm not sure of the technical term you are

2 using, if you could please explain it.

3 Q. He was present at your deposition in a prior

4 case?

5 A. Yes.

6 Q. And that was in the Mississippi case?

7 A. Uh-huh.

8 Q. Was he also present at that deposition he gave

9 in the Florida case?

10 A. Yes.

11 Q. Was Julia Tyler present at both depositions?

12 A. No.

13 Q. Neither?

14 A. Present in the room, he was not present in the

15 room all the time.

16 Q. So how many times would you estimate you have

17 met with Allen Purvis from Shook, Hardy & Bacon?

18 MS. TYLER: Objection to form.

19 Q. In person.

20 MS. TYLER: Objection to form.

21 A. How many times have I met Allen Purvis in  
22 person? Could you define what constitutes a meeting,  
23 please?

24 Q. Let me make sure I understand. So for purposes  
25 of your testimony to this jury, you, as a Ph.D., are

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1 not positive what constitutes a meeting; is that  
2 right? Is that what you are telling me?

3 A. I'm asking you for a definition.

4 Q. I'm asking you for a question. I'm not giving  
5 answers to any questions, please understand that.

6 A. Excuse me.

7 Q. Do you understand what a meeting is as a Ph.D.?

8 A. No.

9 Q. Okay. And so how many times would you say you  
10 have had -- let's not have had a meeting, let's say  
11 had contact with Allen Purvis prior to yesterday in

12 your meeting, whether that be in person or by  
13 telephone, how many times would you have had contact?

14 A. Hundreds.

15 Q. And of those hundreds of contacts, how many were  
16 face to face in person versus over the telephone?

17 A. Most would be face to face.

18 Q. And would most of those be in your office or  
19 someplace in the city of [DELETED], or did you get  
20 on an airplane and go to where he was?

21 A. That I couldn't speculate, I wouldn't -- I  
22 wouldn't know.  
23 Q. You wouldn't estimate that half and half were  
24 you going to him versus him coming to you?  
25 MS. TYLER: Objection.

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22

1 A. No.  
2 Q. But of those hundreds of meetings that you have  
3 had with Allen Purvis, some --  
4 MR. MANNING: Go ahead, counsel.  
5 MS. TYLER: Objection, misstating his  
6 testimony.  
7 MR. MANNING: Just wait until my question  
8 is finished; okay? Just don't interrupt me, just as  
9 you have asked not to be interrupted; all right?  
10 MS. TYLER: I appreciate that.  
11 MR. MANNING: Thank you.  
12 Q. Now of those hundreds of contacts that you have  
13 had with Allen Purvis, when they didn't take place in  
14 [DELETED] -- is that where you live?  
15 A. Yes.  
16 Q. Some took place in New Orleans, right, those  
17 contacts?  
18 A. Yes.  
19 Q. Some took place in Washington, D.C.  
20 A. Yes.  
21 Q. Some took place in Kansas City.  
22 A. No.  
23 Q. Never. No contacts between you and Mr. Purvis

24 in Kansas City ever; correct?

25 A. No.

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C O N F I D E N T I A L

23

1 Q. Some took place in Chicago.

2 A. No.

3 Q. Never once to Chicago.

4 A. No.

5 Q. You never went once to Chicago and spoke in a  
6 room at Jones Day law firm where there were 24  
7 lawyers present, or a good number of lawyers present,  
8 Allen Purvis being one of them?

9 A. No.

10 Q. So of the hundred or so contacts, if they were  
11 in person, they took place in New Orleans or  
12 Washington, D.C.?

13 MS. TYLER: Objection.

14 A. Yes.

15 Q. And some in Florida when you gave your  
16 deposition in Florida?

17 A. No.

18 Q. Where did you give your deposition? You didn't  
19 give one in Florida?

20 A. I'm sorry?

21 Q. Did you give a deposition in Florida?

22 A. Yes.

23 MS. TYLER: Objection.

24 Q. And Allen Purvis, was he present when you did?

25 A. Yes.

C O N F I D E N T I A L

24

1 Q. So you were then in face-to-face contact with  
2 him in Florida at your deposition?

3 A. No.

4 Q. And why not? Was he on the telephone?

5 A. We were face to face.

6 Q. So you had face-to-face contact with Allen  
7 Purvis in Florida?

8 A. No.

9 MS. TYLER: Objection.

10 Q. Why not? Tell me where I'm wrong.

11 A. I wasn't in Florida, sir.

12 Q. Where were you?

13 A. I was in Washington.

14 Q. Thank you. Besides Allen Purvis, there is this  
15 gentleman named John but you don't know his last  
16 name, sitting here?

17 A. I stated that before, yes, sir, that I do not  
18 know John's last name.

19 Q. How many contacts have you had with John?

20 A. Six times.

21 Q. Where have those taken place?

22 A. Minneapolis.

23 Q. All of them?

24 A. All of them.

25 Q. And over what period of time?

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1 A. Thirty-six hours.

2 Q. The last 36 hours?

3 A. The last 36 hours.

4 Q. Have you met with anyone else who are lawyers  
5 representing the tobacco industry other than Julia  
6 Tyler, Allen Purvis and John?

7 MS. TYLER: Objection, misstates his  
8 testimony.

9 A. Could you repeat the question, please.

10 MS. TYLER: Sure. Please, David.

11 (Record read.)

12 A. Yes.

13 Q. Who?

14 A. The name that I could recall would be Jan  
15 Johnson.

16 Q. She a lawyer?

17 A. Yes.

18 Q. Do you know who she represents?

19 A. Not for sure.

20 Q. Do you know what law firm she is with?

21 A. Yes.

22 Q. What?

23 A. Johnson & Tyler.

24 Q. Who else?

25 A. I wouldn't be able to recall the names. I don't

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C O N F I D E N T I A L

1 recall nor remember the names of persons that I sat  
2 in meetings with.

3 Q. You have sat in meetings, would you say, with  
4 many lawyers?

5 A. At times there were numbers of lawyers in the  
6 room.

7 Q. And you don't recall any of them?

8 A. No.

9 MS. TYLER: Objection.

10 Q. And yet there have been many meetings; is that  
11 right?

12 MS. TYLER: Objection.

13 A. No.

14 Q. There have not been many meetings with many  
15 lawyers?

16 A. That's correct.

17 Q. There have been a few meetings with many  
18 lawyers.

19 MS. TYLER: Objection.

20 Q. Is that correct?

21 A. Right.

22 Q. How many meetings would you estimate there have  
23 been with many lawyers?

24 A. Three or four.

25 Q. Have you ever met with anyone from the tobacco

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1 industry when a lawyer wasn't present, to your  
2 knowledge?

3 A. The question has to assume something that's  
4 false.

5 Q. Why is that, sir?



6 A. I've never met with anybody from the tobacco  
7 industry.  
8 Q. That was the question. So you never met with  
9 anyone from the tobacco industry; correct?  
10 A. That's correct.  
11 Q. You have only met with lawyers who represent the  
12 tobacco industry.  
13 A. I didn't ask who they represented.  
14 Q. So are you saying that, for example --  
15 Do you know who Julia Tyler represents?  
16 A. No.  
17 Q. You have never asked her?  
18 A. That's correct.  
19 Q. How about Allen Purvis from Shook, Hardy &  
20 Bacon, do you know who he represents?  
21 A. No.  
22 Q. Is it your testimony that you do not know that  
23 Julia Tyler represents a tobacco company?  
24 MS. TYLER: Objection to form.  
25 Q. Is that your testimony?

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1 A. No.  
2 Q. You do know she represents a tobacco company?  
3 A. Yes.  
4 Q. You just don't know which one?  
5 A. That's correct.  
6 Q. You know that Allen Purvis represents a tobacco  
7 company; correct?

8 A. Yes.

9 Q. You just don't know which one?

10 A. That's correct.

11 Q. You know that John represents a tobacco company,

12 you just don't know which one?

13 A. That's correct.

14 Q. You know that all the lawyers you've met in the

15 meetings that you have described, whatever number

16 they are, represent tobacco companies?

17 A. No.

18 Q. You don't know that?

19 A. No.

20 Q. You don't know who they represent?

21 A. That's correct.

22 Q. Okay. How long have you been a consultant

23 and/or an expert for the lawyers who work for tobacco

24 companies?

25 A. Best of my recollection, probably three, four

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1 years, five years, four years.

2 Q. Three, four, five years?

3 A. That would be a very crude estimate.

4 Q. Do you remember the first contact you had?

5 A. No.

6 Q. You don't know how it came about?

7 A. No.

8 Q. Did you have to make a decision in yourself

9 internally as a professional about whether or not you

10 would work for the tobacco companies?

11 MS. TYLER: Objection to form.  
12 Q. When you had a first contact?  
13 MS. TYLER: Objection to form.  
14 A. No.  
15 Q. You didn't need to do that?  
16 A. No.  
17 Q. And you have no idea when the first contact was  
18 made?  
19 A. That's correct.  
20 Q. Do you need to disclose to your university who  
21 you may be working for on an outside-consultant  
22 basis?  
23 MS. TYLER: Objection to form.  
24 Q. Do you need to do that?  
25 A. Could you rephrase the question, please? I

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1 don't understand your question.  
2 MR. MANNING: Repeat the question, please.  
3 (Record read.)  
4 A. Not specifically, no.  
5 Q. Do you need to generally?  
6 A. Yes.  
7 Q. How do you do that?  
8 A. I put it down on paper.  
9 Q. In a memo?  
10 A. No, on a form.  
11 Q. A form that's filled out?  
12 A. Uh-huh.

13 Q. And you have done that?  
14 A. Oh, yes.  
15 Q. On more than one occasion?  
16 A. Yes.  
17 Q. You fill it out annually?  
18 A. One hopes so.  
19 Q. And do you list who is paying you? Is that one  
20 of the questions on the form?  
21 A. No.  
22 Q. It's not?  
23 A. No.  
24 Q. What does the form entail?  
25 A. Which form, sir?

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1 Q. The form that I think you and I have just been  
2 talking about for the last four questions. Are you  
3 aware of the form we have been talking about?  
4 A. You asked me if I disclosed.  
5 Q. Yeah, and you said you did it through a form.  
6 A. Uh-huh.  
7 Q. And that's the form you and I have just been  
8 talking about?  
9 A. And that's the one you want me to talk about  
10 now.  
11 Q. That's the only one I've talked to you about in  
12 the half hour I've met you; isn't that right?  
13 A. Okay.  
14 Q. Yeah. So why don't you just tell me about that  
15 form? When I say "please tell me about that form,"

16 that's the form I mean, you bet.

17 MS. TYLER: Objection to form.

18 A. It will ask if I own any companies for which I  
19 consult and have produced products that I would use  
20 in any way, shape or form with regard to my research;  
21 it would ask if any members of my family work for any  
22 firms that I contract with with any of my grants and  
23 contracts; it would ask if I utilize any lab testing  
24 facilities which I own or have shares thereof; it  
25 would ask if I have any patents or own products that

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1 I might use in my research, and then it would ask do  
2 I have any other activities in which I may do work  
3 in.

4 Q. What do you mean, other activities that you may  
5 do work in?

6 A. Well for me, since I'm not an M.D., I really --  
7 it's -- there is not much of a way for me to have a  
8 conflict of interest because I don't have any of  
9 those things listed above, so then I just take the  
10 opportunity to list that I consult for various  
11 federal agencies, state agencies, city, and that I  
12 consult with attorneys.

13 Q. And who reviews that form?

14 A. That would be reviewed by grants and contracts  
15 and Mr. Beal.

16 Q. You could obtain that form by calling Mr. Beal  
17 and asking him for it; is that right?

18 A. No, I could not.  
19 Q. Do you have a copy in your office?  
20 A. No, I do not.  
21 Q. Where are the copies of these forms?  
22 A. The only copy that I would know of would be  
23 probably with Mr. Beal.  
24 Q. And you couldn't call him and ask him? You know  
25 him; right?

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1 A. Uh-huh.  
2 Q. Is that right?  
3 A. Yes.  
4 Q. I mean, you see him on the university, you say  
5 hi to him?  
6 A. Yes.  
7 Q. A colleague of yours; right?  
8 A. Yes.  
9 Q. But you couldn't call him on the phone and ask  
10 him for a copy of the form; is that right?  
11 A. It's not my form, it's not for me to have.  
12 Q. That's not -- The question is: Could you call  
13 him and ask him for a copy?  
14 A. No.  
15 Q. And the reason you couldn't do that?  
16 A. It's not my form, it's not for me to have.  
17 Q. It's his form.  
18 A. Right.  
19 Q. But you filled it out?  
20 A. Right.

21 Q. In your handwriting?  
22 A. Yes.  
23 Q. And it is handwriting, not typed; right?  
24 A. Yeah.  
25 Q. Now who did you list on the form as the firms

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1 that you contract with?  
2 A. None.  
3 Q. And the reason is that you --  
4 Why did you say none?  
5 A. Privacy.  
6 Q. And why did you say "privacy"?  
7 MS. TYLER: Objection to form.  
8 A. I didn't say "privacy." I wrote I consult for  
9 attorneys.  
10 Q. And what attorneys did you write down?  
11 A. None.  
12 Q. So you wrote "I consult with attorneys" but you  
13 listed no names.  
14 A. Correct.  
15 Q. You listed attorneys generically; correct?  
16 A. I don't understand what you mean.  
17 Q. Did you say on the form you do consult with  
18 attorneys?  
19 A. Yes.  
20 Q. Did you say on the form you consult with  
21 attorneys who are paid by the tobacco industry?  
22 A. No.  
23 Q. Did -- So all you said was attorneys?

24 A. Correct.

25 Q. So you did not disclose to your university that

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1 you are consulting with lawyers that you know

2 represent tobacco companies; correct?

3 A. No.

4 Q. You do know, you told me earlier, that you know

5 Julia Tyler represents a tobacco company?

6 A. Right, correct.

7 Q. You just don't know which one?

8 A. Right.

9 Q. You know John represents a tobacco company, you  
10 don't know which one?

11 A. Uh-huh.

12 Q. You know Allen Purvis represents a tobacco  
13 company, you don't know which one?

14 A. Correct.

15 Q. Other lawyers you met with in meetings where  
16 tobacco was discussed, you don't know who they  
17 represent?

18 A. That's correct.

19 Q. And in your form to your university, even though  
20 you knew that the lawyers you were working for  
21 represent tobacco companies, you did know that;  
22 right?

23 A. Uh-huh.

24 Q. You knew it when you were filling out the  
25 form --



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1 A. Uh-huh.

2 Q. -- correct?

3 A. Uh-huh.

4 Q. You did not list on the form that the lawyers  
5 work for the tobacco companies.

6 MS. TYLER: Objection to form.

7 Q. Correct?

8 A. Correct.

9 Q. And you have not had that discussion with Mr.  
10 Beal to your knowledge.

11 MS. TYLER: Objection to form.

12 A. I don't understand your question.

13 Q. You have not had the discussion with Mr. Beal  
14 that you work for lawyers who represent the tobacco  
15 industry.

16 MS. TYLER: Objection to form.

17 A. Yes, I have.

18 Q. And you have had that personal discussion with  
19 him.

20 A. Yes, I have.

21 Q. And how did that come about?

22 A. How did my conversation come about?

23 Q. Yes, sir.

24 A. Because I wished to talk to him about it.

25 Q. How did that come about? You wished to talk to

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1 him about it. Tell me about everything that occurred  
2 in that conversation between you and Mr. Beal, what  
3 did you say and what did he say?

4 MS. TYLER: Objection to form. Which  
5 question do you want him to answer?

6 A. I don't know which -- could we have one --

7 Q. Tell me everything you said to Mr. Beal.

8 A. As the best of my recollection, I indicated that  
9 he had been contacted by an attorney general's  
10 office, by letter, and that I had received a copy of  
11 that letter, and that I appreciated his response that  
12 he returned to the attorney general's office.

13 Q. What was the nature of that communication from  
14 the attorney general to Mr. Beal and his response,  
15 what was that?

16 A. Oh, I have no idea.

17 Q. Did you see it?

18 A. I'm sorry, you are asking questions, sir. If we  
19 can do one at a time I can try to answer.

20 Q. You said you appreciated his response.

21 A. That's correct.

22 Q. What was his response?

23 A. You asked me the contact -- content of it and I  
24 don't know the content of his total response to them.

25 Q. Did you see it?

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1 A. I saw part of his response; I don't know if  
2 there was more.

3 Q. Did he copy you with it?  
4 A. Oh, yes, that which he wrote.  
5 Q. So you saw the letter he wrote?  
6 A. I saw a letter that he wrote.  
7 Q. What did it say?  
8 A. It said that the university would not surrender  
9 documents as requested by the attorney general's  
10 office of the state of Mississippi; that if the state  
11 of Mississippi were to pursue a suit to retrieve  
12 those documents, regardless, that the university  
13 would inform Dr. Morse of the request; and at that  
14 time, regardless of what Dr. Morse would do, the  
15 university would move forward with a suit against the  
16 state of Mississippi to prevent any documentation  
17 being turned over to them, and that Dr. Morse was  
18 free to conduct his research unfettered by outside  
19 interests.  
20 Q. Conduct research unfettered by outside  
21 interests; is that correct?  
22 A. Uh-huh.  
23 Q. And he said that to the attorney general of the  
24 state of Minnesota -- state of Mississippi; is that  
25 right?

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1 MS. TYLER: Objection.  
2 A. Sir, you are asking for recall from months ago.  
3 I consider it quite unfair but I will try to do the  
4 best I can to deliver a message to you. Yes, that's

5 the best I can remember from months ago of a letter  
6 written under very threatening circumstances, yes,  
7 sir.

8 Q. That was a letter that's written under very  
9 threatening circumstances that sticks out, I mean  
10 that you tend to remember; correct?

11 A. Sir, I'm giving you the best recall I can. I'm  
12 very sorry. It's very inaccurate in my recall.

13 Q. All I'm asking you for is your best recall; you  
14 understand that?

15 A. You had not said that before.

16 Q. That's all I'm ever asking, is your best  
17 recall. Do you understand that now?

18 A. If it's on record the best you are asking for is  
19 my best recall, I'm so giving it to you.

20 Q. Now had you talked to Mr. Beal before that  
21 letter arrived?

22 A. Sure.

23 Q. Why?

24 A. He is the attorney for the university.

25 Q. Had you talked to him about the fact that you

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1 were doing work for law firms that represent the  
2 tobacco industry before that letter arrived from the  
3 attorney general of the state of Minnesota?

4 A. I would doubt it.

5 Q. So you're telling Mr. Beal about the fact that  
6 you were doing work for lawyers who represent the  
7 tobacco industry came about because there was a

8 communication from an outside source to Mr. Beal that  
9 required you and him to talk; is that right?  
10 A. No.  
11 Q. Why is that wrong?  
12 A. I didn't talk to him about my work with  
13 attorneys in the tobacco industry. I talked to him  
14 about a letter coming from the attorney general of  
15 Mississippi.  
16 Q. I understand that.  
17 A. Okay.  
18 Q. Prior to your conversation with him about a  
19 letter coming from the attorney general of the state  
20 of Mississippi, had you had a conversation with him  
21 in any way, shape or form about your work for lawyers  
22 who represent the tobacco companies?  
23 A. No.  
24 Q. When the lawyers --  
25 When the letter came from the attorney general

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1 of the state of Mississippi, did you then tell him  
2 explicitly that you were working for lawyers who  
3 represented the tobacco industry?  
4 A. I reiterated what was in front of him.  
5 Q. Was that stated in the letter in front of him?  
6 Is that what you are saying?  
7 A. Correct.  
8 Q. That you in fact work for lawyers who  
9 represented the tobacco industry?

10 A. Correct.

11 Q. And what else occurred by way of Mr. Beal's

12 conversation with you? What did he say to you?

13 A. We discussed another contract that he was trying

14 to put together for me, I believe.

15 Q. Well who was that for?

16 A. That was in relationship to the rental of a

17 house.

18 Q. Was there any other discussion that you can

19 recall?

20 A. I wouldn't think so.

21 Q. Okay. You understand --

22 You send bills to somebody; is that right?

23 MS. TYLER: Objection to form.

24 Q. As a result of your work, for example, in the

25 Minnesota, Mississippi, Florida case, you send bills?

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1 MS. TYLER: Objection to form.

2 A. Yes.

3 Q. Who do you send those bills to?

4 A. Shook, Hardy & Bacon.

5 Q. So all your bills go to Shook, Hardy & Bacon.

6 MS. TYLER: Objection to form.

7 Q. Is that correct, that relates to work for the

8 tobacco companies?

9 A. I think so.

10 Q. So if Julia Tyler calls you or John calls you or

11 somebody else calls you from another law firm, you

12 record your work but it's billed to Shook, Hardy &

13 Bacon?  
14 A. Yes.  
15 Q. Is that sent to Allen Purvis?  
16 A. Yes.  
17 Q. In Washington, D.C.?  
18 A. No.  
19 Q. Where?  
20 A. Kan -- To Shook, Hardy & Bacon in Kansas City.  
21 Q. And you have been doing -- sending those bills  
22 anywhere from the last three to five years?  
23 A. To my best recollection.  
24 Q. Have you done work for the lawyers representing  
25 the tobacco industry other than testifying in

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1 Mississippi, Florida and Minnesota?  
2 MS. TYLER: Objection.  
3 A. I don't honestly recall.  
4 Q. Have you done work for the case in Texas, for  
5 example?  
6 A. Yes.  
7 Q. Have you given testimony in Texas?  
8 A. No.  
9 Q. Have you written a report for Texas?  
10 A. Not that I recall.  
11 Q. Have you written a report for any other state?  
12 MS. TYLER: Objection to form.  
13 A. I don't recall.  
14 Q. Have you given testimony in any other state on  
15 tobacco issues?

16 A. Not that I recall.

17 Q. Have you worked for the tobacco industry in any  
18 other capacity other than testifying and/or offering  
19 expert reports in various states?

20 MS. TYLER: Objection to form.

21 A. I don't work for the tobacco industry.

22 Q. Well let's talk about that. You send bills to  
23 Shook, Hardy & Bacon?

24 A. That's correct.

25 Q. You know that Shook, Hardy & Bacon represents a

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1 tobacco company.

2 A. Yes, I guess. That's an assumption.

3 Q. You don't know who?

4 A. I don't know.

5 Q. You know that whoever is paying, Shook, Hardy &  
6 Bacon is somebody in the tobacco industry.

7 A. I don't know that for a fact. I make that  
8 assumption.

9 Q. You know they are not paying themselves?

10 A. Sir, I don't know the finances of Shook, Hardy &  
11 Bacon, to be honest with you.

12 Q. You know that they are working for someone?

13 A. Yes.

14 Q. Pardon me?

15 A. Yes.

16 Q. And does the check that arrives to you arrive  
17 from Shook, Hardy & Bacon?



18 A. Yes.  
19 Q. The money that goes --  
20 And you cash those checks and put them in your  
21 pocket; right?  
22 A. In my bank account, yes.  
23 Q. And do you have to share any of that money that  
24 comes from Shook, Hardy & Bacon with the university?  
25 A. No.

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1 Q. That's all your money?  
2 A. Yes.  
3 Q. And you know that that money that comes from  
4 Shook, Hardy & Bacon to you, that they get it from a  
5 source in the tobacco industry, you know that, don't  
6 you?  
7 A. No.  
8 Q. You know that it doesn't come from their law  
9 firm.  
10 A. No, I don't know that.  
11 Q. Okay. That's great. So you as a Ph.D., what do  
12 you call yourself, sociologist?  
13 MS. TYLER: Objection to form.  
14 Q. What's your term, so I don't offend you, a Ph.D.  
15 what?  
16 A. Behavioral scientist, sociologist would be  
17 fine.  
18 (Interruption by the reporter.)  
19 Q. So you as a Ph.D. --  
20 Have you ever worked for lawyers besides these

21 lawyers who represent the tobacco industry?  
22 A. Oh, yes.  
23 Q. How many lawyers have you worked for?  
24 A. I would have no recollection of the number.  
25 Q. And you have given testimony in cases?

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1 A. Oh, yes.  
2 Q. And generally when you do that, you understand  
3 there is two sides to a case, a plaintiff and a  
4 defendant?  
5 A. Yes.  
6 Q. And you understand a plaintiff in the cases --  
7 You have testified in some personal injury  
8 cases, haven't you?  
9 A. Yes.  
10 Q. And generally in those cases, you know that the  
11 plaintiffs lawyer has taken the case on a  
12 contingency-fee basis; is that right?  
13 A. I have no idea how they fund themselves. That's  
14 not my business.  
15 Q. No idea at all?  
16 A. No idea at all.  
17 Q. When you work for a defendant, you understand  
18 there is a company paying the lawyers who ultimately  
19 pay you.  
20 A. If that's what you say, then I will agree to  
21 that.  
22 Q. So you understand that there are tobacco  
23 companies who pay Shook, Hardy & Bacon who ultimately

24 are the ones who are paying you?

25 A. If that's what you say, then that's what I will

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1 believe.

2 Q. Well in fact, sir, you know, and you can't look  
3 this jury here in Minnesota in the eye, or this judge  
4 in the eye, and say that you as a Ph.D. person who is  
5 educated does not know that -- you do not know --  
6 retract the question. I'll start another question.

7 You in fact know, a person of higher education,  
8 that the money that has come into your pocket as a  
9 result of your work over the last three to five years  
10 with various lawyers who you know represent the  
11 tobacco industry, you know that the money that is  
12 going into your pocket is from the tobacco industry;  
13 correct?

14 MS. TYLER: Objection to form.

15 A. I -- You are telling me this and I will believe  
16 this.

17 Q. And this has crossed your mind for the first  
18 time here today; is that right?

19 MS. TYLER: Objection.

20 Q. Correct?

21 A. It's never been a concern of mine.

22 Q. No, that's not the question. Listen to the  
23 question. I'm not asking if it's a concern of  
24 yours.

25 It's crossed your mind right now today for the

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1 very first time, never crossed your mind before?

2 A. No, I wouldn't say that.

3 Q. It's not true because it crossed your mind when

4 you gave your deposition in Mississippi, isn't that

5 right, because they asked you similar questions,

6 didn't they?

7 A. Uh-huh.

8 Q. Correct?

9 A. Yes.

10 Q. And it crossed your mind in Florida, the Florida

11 case when you gave your deposition in Washington,

12 D.C., because they asked you similar questions;

13 correct?

14 A. That would be correct.

15 Q. And as a result of questions in those two

16 depositions and now questions on that same topic for

17 the third time, it is in fact true that you know full

18 well the money that goes into your bank account that

19 arrives in a check from Shook, Hardy & Bacon comes

20 from tobacco companies; correct?

21 MS. TYLER: Objection to form.

22 Q. You know that.

23 A. Three sets of attorneys general have told me

24 that for a fact so I will now assume that that's

25 probably a fact.

C O N F I D E N T I A L

1 Q. So we will agree, then, that you know that?

2 A. I'll accept that.

3 Q. So you know it; correct?

4 A. I'll accept that.

5 Q. Have you ever had any contact with any other  
6 experts that work for the tobacco industry, to your  
7 knowledge?

8 MS. TYLER: Objection to form.

9 A. Uh-huh, uh-huh.

10 Q. Who?

11 A. I don't remember the gentleman's name. Starts  
12 with an S.

13 Q. Who else?

14 A. He is a historian but I'll be darned if I know  
15 his name.

16 Q. Historian?

17 A. Uh-huh.

18 Q. Is he here in Minnesota?

19 A. No.

20 Q. Wasn't Hy Berman?

21 A. No.

22 Q. So you met with a historian. Do you know where  
23 he was from?

24 MS. TYLER: Objection.

25 A. No, I don't.

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1 Q. Who was -- Who else was in that meeting when you  
2 met with the historian?

3 MS. TYLER: Objection.

4 A. He was standing in the hallway. I was  
5 introduced to him and was told this is the historian,  
6 said thank you very much and that was it.

7 Q. Where was that hallway?

8 A. In Washington, D.C.

9 Q. Who else have you met?

10 MS. TYLER: Objection.

11 A. Best I recall, that would probably be about it.

12 Q. This gentleman that began with an S, do you know  
13 what his discipline was?

14 A. Some form of survey research marketing,  
15 advertising, something in that area.

16 Q. Was it a he or she?

17 A. He.

18 Q. Do you know where he -- where he was in?

19 A. No, I don't.

20 Q. By way of academic institution?

21 A. No.

22 Q. Where did you meet him?

23 A. Talked to him on the phone.

24 Q. Why did he call you?

25 MS. TYLER: Objection to form.

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1 A. He had a survey.

2 Q. What was the survey?

3 A. It was about smoking, factors or onset of  
4 cigarette smoking.

5 Q. Did he send it to you?  
6 A. Uh-huh, faxed it to me.  
7 Q. Do you have it?  
8 A. No.  
9 Q. Pardon me?  
10 A. No.  
11 Q. Did you throw it away?  
12 A. Don't remember.  
13 Q. Why did he -- Why did he fax it to you? Did you  
14 ask him to? Did somebody tell him to?  
15 A. I don't know if somebody told him to. We were  
16 talking about it and I said that would be interesting  
17 to take a look at. He had done the survey and,  
18 following Gallup poll standards, had conducted a  
19 survey and had interesting results on it and said I'd  
20 like to see it.  
21 Q. Do you remember what the results were?  
22 A. Indicated children weren't affected by  
23 advertising, smoking behavior.  
24 Q. Anything else you remember about it?  
25 A. Not sure. I don't wish to conduct -- I'm not

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1 going to speculate on research data out of mind.  
2 That's not -- that's ridiculous.  
3 Q. That is ridiculous, isn't it?  
4 A. It is.  
5 Q. You would never do that, you would never  
6 speculate on research data that --  
7 A. Not unless somebody requires me to do so.

8 Q. Yeah. Did you initiate the call to the  
9 gentleman whose name began with S?  
10 A. I don't remember.  
11 Q. Now you have a certain amount of respect for  
12 academic freedom; correct?  
13 A. Yes.  
14 Q. You believe that you ought to be able to carry  
15 out your work in an atmosphere of academic freedom;  
16 correct?  
17 A. Yes.  
18 Q. One of the reasons you believe that is, that you  
19 believe it's important as a person who will uphold  
20 the integrity of the institution of academic freedom  
21 in general, is that the work you do be objective;  
22 correct?  
23 A. Correct.  
24 Q. You do not want to be influenced one way or  
25 another by outside sources when you do your objective

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1 work; correct?  
2 A. Correct.  
3 Q. When you do objective work, it's important to  
4 take into account all sources of information;  
5 correct?  
6 A. No.  
7 Q. On a particular topic.  
8 A. No.  
9 Q. So on a particular topic, if you are doing



10 research, you don't want to necessarily look at all  
11 sources of information that may bear on the topic  
12 that you are doing research in in order to be  
13 objective; is that right?  
14 A. If I wanted to, sir, it would be fine. I don't  
15 have the time to absorb all pieces of information  
16 that might be relevant to a piece of research I was  
17 doing, in all honesty. I have to stay in my  
18 expertise, the areas I know and am able to  
19 interpret. When I move outside that area, then not a  
20 good idea. I look at the area I have expertise in, I  
21 have training in, I have abilities in, not all areas  
22 of information.  
23 Q. What are those areas you think you have  
24 abilities in? Define them for me.  
25 MS. TYLER: Objection to form.

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1 A. Well, one would be human behavior patterns.  
2 Q. What else?  
3 A. Two would be factors affecting or impacting  
4 those human behavior patterns.  
5 Q. What else?  
6 A. Models of high-risk health behavior.  
7 Q. What else?  
8 A. Instruments to collect data with regard to  
9 high-risk health behavior.  
10 (Interruption by the reporter.)  
11 Q. What else?  
12 A. Construction of instruments related high-risk

13 health behavior.  
14 Q. What else?  
15 A. Sampling techniques.  
16 Q. What else?  
17 A. Interviewing techniques.  
18 Q. What else?  
19 A. Training techniques.  
20 Q. What type of training?  
21 A. Training people to be interviewers, training  
22 techniques for outreach, training techniques for  
23 coding.  
24 Q. For what?  
25 A. Coding.

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1 Q. What else?  
2 A. Training techniques for data entry.  
3 Q. What else?  
4 A. Training techniques for checking and cleaning  
5 data.  
6 Q. What else?  
7 A. Training techniques for inputting data.  
8 Q. What else?  
9 A. Training techniques for the gathering,  
10 collecting of human specimens and transportation  
11 thereof to laboratory sites.  
12 Q. You mean like cadavers?  
13 A. Blood and urine.  
14 Q. Blood and urine, okay. What else?

15 A. Data analysis, data interpretation.  
16 Q. What else?  
17 A. Presentation of data.  
18 Q. Anything else?  
19 A. Writing of research findings.  
20 Q. Anything else?  
21 A. That's -- For the moment, that's what I can  
22 remember. It's not an exhaustive list but it's a  
23 start.  
24 Q. Now, sir, if you were going to do some work in  
25 human behavior patterns specifically --

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1 A. Yes.  
2 Q. -- in a academically free institution --  
3 A. Uh-huh.  
4 Q. -- in that narrow and specific area, and  
5 whatever area you chose within that area of human  
6 behavior patterns that you were going to look at, in  
7 that area you would want to consider all of the  
8 sources of information that may bear on that  
9 particular topic --  
10 MS. TYLER: Objection to --  
11 Q. -- in order to render objective results.  
12 MS. TYLER: Objection to form.  
13 Q. Is that correct, sir?  
14 A. No.  
15 Q. Why is that not correct?  
16 A. As I had stated previously for the record, I  
17 would be examining those areas which are directly

18 related to my area of expertise and that I have  
19 training in. I -- If something were so obviously as  
20 to be standing at my doorstep, I think I would at  
21 least ask why it is there, but beyond that --  
22 Q. Okay. So if something was standing at your  
23 doorstep and it was obvious that it was there, you  
24 would at least ask about it?  
25 A. I'd ask what it was.

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1 Q. Okay. Because to not would be to ignore what  
2 was standing at your door; right?  
3 A. Just finding why it was there.  
4 Q. Right. And after you found out what was there,  
5 you may or may not want to look at it?  
6 A. I may or may not understand it.  
7 Q. Right. And you may or may not want to look at  
8 it.  
9 A. That's correct.  
10 Q. And if you don't want to look at what's standing  
11 in your door, then it may or may not impact wither or  
12 not your work and research was objective; correct?  
13 MS. TYLER: Objection to form.  
14 A. Repeat the question, please.  
15 Q. That's all right. I'll withdraw that one.  
16 A. Okay.  
17 Q. Now in the course, sir, of your work with  
18 lawyers who represent the tobacco industry, and you  
19 have mentioned their names, whether that's for the

20 last three or last five years you're not sure;  
21 correct?  
22 A. Correct.  
23 Q. In the course of that work, have you ever asked  
24 those lawyers to look at one tobacco company  
25 document, to show it to you?

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1 MS. TYLER: Objection to form.  
2 A. I don't recall. A tobacco document, that means  
3 -- could you clarify a tobacco document just so  
4 I'm --  
5 Q. A document generated by a tobacco company.  
6 A. No, I don't think so.  
7 Q. You have never asked for that.  
8 A. I wouldn't think so.  
9 Q. And they have never shared that with you, to  
10 your knowledge.  
11 A. I wouldn't recall any such sharing.  
12 Q. Prior to this deposition, have you seen, this  
13 one here, in the last -- in a week or whatever, last  
14 week, have you seen any documents that are tobacco  
15 company documents on tobacco company stationery?  
16 MS. TYLER: Objection to form.  
17 A. Not that I recall.  
18 Q. Are you aware that I sent a letter to a lawyer  
19 here at the Dorsey law firm designating a number of  
20 documents that are generated on tobacco company  
21 stationery that I intend to show you today? Are you  
22 aware of that?

23 A. No, sir.

24 Q. No one has ever told you that I sent, pursuant

25 to a court order, a list of the documents that I

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1 intend to show you in the course of the 12 hours that

2 we have to spend together, nobody told that you?

3 MS. TYLER: Object, objection to form.

4 Q. Is that right?

5 A. Nobody ever told me that.

6 Q. You haven't seen that list?

7 A. No.

8 Q. You haven't seen those documents?

9 A. No.

10 Q. So for the very first time you have learned that

11 I, a week ago, sent a list of some between 30 and 50

12 -- I'll get to the exact number in a little while

13 and I'll show you the list, but you are learning this

14 for the first time right now.

15 MS. TYLER: Objection to form.

16 Q. Correct?

17 A. Correct.

18 Q. That I intend to show you some documents from

19 the tobacco company, correct, you are learning that

20 for the first time?

21 A. Correct.

22 Q. And you never in your life have seen a document

23 from the tobacco companies?

24 MS. TYLER: Objection to form.

25 A. Not that I know of.

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C O N F I D E N T I A L

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1 Q. Now you are pretty facile with computers?

2 A. Facile?

3 Q. You are good, you know how to work with  
4 computers.

5 A. Limited.

6 Q. Well part of a lot of the data entry and various  
7 other things you indicated you have expertise in  
8 involve computers?

9 A. Correct.

10 Q. You have a computer in your house?

11 A. Correct.

12 Q. You have a computer in your office at the  
13 university?

14 A. Correct.

15 Q. You e-mail your colleagues; correct?

16 MS. TYLER: Objection to form.

17 A. Yes.

18 Q. You work with WordPerfect when you are drafting  
19 documents?

20 A. No.

21 Q. Do you type your own documents?

22 A. Yes.

23 Q. You do them on the computer?

24 A. Correct.

25 Q. You work with a different software, not

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- 1 WordPerfect?
- 2 A. Correct.
- 3 Q. What software do you work with?
- 4 A. Word.
- 5 Q. So you are familiar with Word?
- 6 A. Yes.
- 7 Q. You know how to draft documents, save them at
- 8 the end of a day, come back to them and continue to
- 9 work on them; is that right?
- 10 A. My staff sometimes thinks not but yes, I hope.
- 11 Sometimes I lose them.
- 12 Q. Sometimes you make a mistake and lose them, like
- 13 all of us; right?
- 14 A. Yes.
- 15 Q. And you know how to work on the Internet.
- 16 MS. TYLER: Objection to form.
- 17 A. Within limit.
- 18 Q. You have been on the Internet before.
- 19 A. Yes.
- 20 Q. More than once?
- 21 A. Oh, yes.
- 22 Q. You have done academic research, I would say, on
- 23 the Internet?
- 24 A. Yes.
- 25 Q. Where you have gone in and searched certain

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1 topics?  
2 A. Yes.  
3 Q. And found information --  
4 A. Yes.  
5 Q. -- there? Have you, sir, gone on the Internet  
6 and found tobacco company documents and looked at  
7 them, ever?  
8 A. No.  
9 Q. Last three to five years or before that time?  
10 A. Tobacco company documents, I don't believe so.  
11 Q. Are you aware from various sources, and I'll  
12 talk to you about the sources in a minute, where you  
13 are aware of them from, but are you in fact aware  
14 from various sources that tobacco company documents  
15 exist on the Internet?  
16 A. No, I'm not aware of that.  
17 Q. You never heard that before in your life?  
18 A. Not that I recall.  
19 Q. You never typed in anything on the Internet and  
20 in fact searched to see whether certain tobacco  
21 company documents would come up?  
22 A. No.  
23 Q. And you -- Have you ever gone to book stores and  
24 just browsed?  
25 A. Yes.

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1 Q. What are the best book stores in New Orleans for  
2 browsing, I mean are there two, three of them?  
3 A. I'd say Barnes & Noble on Gretchen's Highway.

4 Q. The best?

5 A. About the best.

6 Q. You go there every now and then?

7 A. Not very frequently.

8 Q. But you go there and browse?

9 A. Yes.

10 Q. You enjoy it?

11 A. Yes.

12 Q. Gone there in the last three to five years,

13 browsed?

14 A. Yes.

15 Q. Ever picked up a book there called Ashes to

16 Ashes written by Richard Kluger?

17 A. No.

18 Q. Ever heard of its existence?

19 A. No.

20 Q. Never ever heard of its existence?

21 A. No.

22 Q. Ever heard of a book called The Cigarette

23 Papers?

24 A. No.

25 Q. Never heard of its existence?

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1 A. No.

2 Q. Never browsed through Barnes & Noble and seen

3 that book?

4 A. No.

5 Q. Never heard of a book in which some academics

6 wrote a book about documents that had been delivered

7 to them by someone who had worked in the tobacco  
8 industry and they published the work about those  
9 papers?  
10 A. Not that I recall.  
11 Q. Never heard of it?  
12 A. You didn't give me a name but I -- I'll save the  
13 time. No, I don't think I've heard of it.  
14 Q. I'll give you a name.  
15 A. Okay.  
16 Q. A book called The Cigarette Papers by Stanton  
17 Glantz, John Slade, Lisa Bero, Peter Hanauer and  
18 Peter Barnes?  
19 A. No.  
20 Q. Never heard of it?  
21 A. No.  
22 Q. And how about a book --  
23 Have you ever heard of a book called the  
24 Smokescreen?  
25 A. The topic is what?

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C O N F I D E N T I A L

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1 Q. Smokescreen.  
2 A. What's the topic? What's the --  
3 Q. It's a -- Generally it's a -- it's a book that  
4 tells the truth behind the tobacco industry cover-up  
5 written by Philip J. Hilts.  
6 A. No.  
7 Q. Never heard of that?  
8 A. No.

9 Q. And so in the course of the last three to five  
10 years, is it fair to say you have never gone into a  
11 book store and found one book, not even one that in  
12 any way, shape or form relates to the tobacco  
13 industry that you have read?

14 A. That would be absolutely true.

15 MS. TYLER: Mr. Manning, at this time I'd  
16 like to state an objection on the record to your  
17 reference to the last four books. These were not  
18 predesignated as being referred to in this deposition  
19 and therefore your reference to them is impermissible  
20 pursuant to the stipulated order, paragraph number  
21 5.

22 MR. MANNING: I'm not going to take up the  
23 time. If you want to discuss anything off the  
24 record, I'd be happy, but not on the record that's on  
25 my time related to this but --

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1 MR. GINDER: I'm stating an objection for  
2 the record.

3 MR. MANNING: I'm just making clear I'm not  
4 responding to your objection. I heard your  
5 objection, I think the reporter did. Let's move on.

6 BY MR. MANNING:

7 Q. Have you ever visited the Minnesota repository  
8 of documents, sir?

9 A. Not that I know of.

10 Q. Are you aware that one exists?

11 A. Not that I know of.

12 Q. These lawyers, Allen Purvis from Shook, Hardy &  
13 Bacon, and Julia Tyler, and John, and this gentleman  
14 whose name you don't know who walked in and out  
15 yesterday, he never told -- none of them have ever  
16 told you that there is a repository of documents from  
17 the tobacco industries and the specific tobacco  
18 companies that they represent where there are many  
19 documents there that they put there. They have not  
20 told you that?

21 A. No.

22 Q. You never knew it existed before I just told you  
23 right now?

24 A. That would be correct.

25 Q. So you couldn't ask to go there and look at

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1 documents because you don't even know it existed;  
2 right?

3 A. I wouldn't because I didn't know it existed.

4 Q. And if you did know -- Now that you know it  
5 exists, you know that there is a place where there  
6 are many documents that they have put there, these  
7 companies who pay them, who pay you, will you ask to  
8 go see them?

9 MS. TYLER: Objection to form.

10 A. I don't know what the documents are.

11 Q. Well let's assume that there are documents  
12 there, many -- let's just say that there are  
13 thousands --

14 A. Uh-huh.  
15 Q. -- of documents there --  
16 A. Uh-huh.  
17 Q. -- that talk about the tobacco companies'  
18 interest in children, targeting children, how to do  
19 it and how they have been effective at it and who has  
20 been effective and who hasn't. Let's just say it's  
21 very narrowly about kids, little kids, 9 year olds,  
22 12 year olds, in that narrow area, would you go --  
23 would you ask these people, hey, as a matter of  
24 academic freedom and objectivity I want to go over  
25 there for two, three hours at least and look at

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1 those? Do you intend to do that?  
2 MS. TYLER: Objection to form.  
3 A. At this time I would have no such intention.  
4 Q. Now do you have any idea how many hours you have  
5 worked for the lawyers that represent these tobacco  
6 companies over the last three to five years?  
7 A. No.  
8 Q. Just impossible to estimate.  
9 A. I can't estimate.  
10 Q. But you could go back and look at your financial  
11 records to determine how much money has been paid to  
12 you. You could do that.  
13 MS. TYLER: Objection. Sir, you are not  
14 allowed to ask -- you are not allowed to inquire in  
15 depositions into the compensation of experts pursuant  
16 to paragraph 9.

17 MR. MANNING: I'm not asking whether he's  
18 been paid, I'm asking whether he can do it, from a  
19 foundational standpoint.

20 MS. TYLER: You are headed in the wrong  
21 direction.

22 MR. MANNING: Note your objection.

23 BY MR. MANNING:

24 Q. Sir, you obviously have financial records upon  
25 which you could reconstruct what you have been paid

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1 by Shook, Hardy & Bacon, I presume?

2 A. No, I do not.

3 Q. You have not kept canceled copies of those  
4 checks?

5 A. No, I do not.

6 Q. So it would be impossible for you, in your own  
7 financial circumstance, to reconstruct what somebody  
8 paid you in a certain year; is that what you are  
9 telling me?

10 A. That would be correct.

11 Q. Have you reviewed the Complaint in the Minnesota  
12 lawsuit?

13 A. No.

14 Q. You know that you are appearing to give a  
15 deposition here today in the case of the state of  
16 Minnesota by Hubert H. Humphrey III, its attorney  
17 general, and Blue Cross and Blue Shield of Minnesota  
18 versus six tobacco companies and The Tobacco

19 Institute, you know that?  
20 A. Correct.  
21 Q. Because you saw that on the very front of your  
22 report.  
23 A. Correct.  
24 Q. And you read it.  
25 A. Correct.

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C O N F I D E N T I A L

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1 Q. And so you know that's why you are here.  
2 A. Correct.  
3 Q. And you generally know as a Ph.D. person that in  
4 a lawsuit, the way it starts is with the Complaint.  
5 MS. TYLER: Objection to form.  
6 A. If you allow me a layman's understanding of  
7 that, yes.  
8 Q. Sure. And the -- Even though you knew that as a  
9 layman, you have not asked yourself to see a copy of  
10 the Complaint in this matter in which you intend to  
11 offer testimony; correct?  
12 A. Right.  
13 Q. And no one on their own, such as Julia Tyler or  
14 Allen Purvis or anybody else, has offered to give you  
15 one and say, Ed, just read this before you give your  
16 deposition, have they?  
17 MS. TYLER: Objection to form.  
18 A. They may have done that and, to be honest with  
19 you, I would suggest I probably wouldn't understand  
20 it outside of the layman's understanding of basically  
21 what goes on. I am aware of the attorney general's



22 complaints.

23 Q. But you are a --

24 You are aware of the attorney general's

25 Complaint?

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1 A. In other cases, yes.

2 Q. You have read the Complaint in other cases?

3 A. I've seen it, yes. I think I've seen it.

4 Q. Tell me what --

5 Have you in fact read a Complaint in the Florida  
6 case?

7 A. I probably looked at it.

8 Q. Have you read a Complaint in the Mississippi  
9 case?

10 A. Probably once again looked at it.

11 Q. Do you have any idea what the allegations are  
12 here by the state of Minnesota against these tobacco  
13 companies that are paying you?

14 A. I think in a general layman sense I do. I don't  
15 understand the legalese of it but I'm an expert in  
16 high-risk health behavior patterns and not in, you  
17 know, the legal document so --

18 Q. We all understand that.

19 A. As long as we are tolerant of that, I think I  
20 have --

21 Q. Lawyers are experts in the law and you are  
22 expert on human behavior, maybe, maybe not, that's  
23 yet to be determined.

24 But the point is, you have some understanding  
25 because you wrote a report attaching your CV and all

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1 the articles --

2 A. Uh-huh.

3 Q. -- attached to it, you have some

4 understanding --

5 A. Uh-huh.

6 MS. TYLER: Object.

7 Q. -- of what the allegations in this case are

8 about; correct? Correct?

9 A. Correct.

10 Q. What is your understanding of what the

11 allegations in this case are about?

12 A. The cigarette industry has advertised to  
13 underage smokers, that they somehow -- this is very  
14 vague -- may have engaged in fraud or deceit, but I  
15 don't -- and I don't know what those terms mean,  
16 number one. I don't mean to be ignorant, I just  
17 don't know, and I don't know what they did to do  
18 that, but there is something like that in there.

19 Q. Okay. What else?

20 A. To be honest with you, those are the, sort of  
21 the biggest categories that sort of strike my mind.  
22 Whenever I come to a case something has gone on in  
23 this regard.

24 Q. So you are aware as you sit here that in this  
25 Minnesota lawsuit that you wrote a report in that

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1 there are at least some serious allegations by the  
2 attorney general using words like fraud and deceit.  
3 You understand that's serious; --  
4 A. Uh-huh.  
5 Q. -- correct?  
6 A. Yes.  
7 Q. And you understand those allegations are against  
8 tobacco companies.  
9 A. Yes.  
10 Q. And you understand, as we have already  
11 established, that those are the same tobacco  
12 companies whose money has eventually found its way  
13 into your pocket; correct?  
14 A. On your basis, I'd say fine.  
15 Q. And you as an academic person, a Ph.D. in New  
16 Orleans, you would not want in any way, shape or form  
17 to support fraud, would you?  
18 A. I don't understand the meaning of the question.  
19 Q. You would not in any way want to support deceit  
20 in any way, shape or form --  
21 MS. TYLER: Objection to form.  
22 Q. -- at all, would you? You would not want to be  
23 a supporter of that, would you?  
24 A. I wouldn't intentionally want someone to be  
25 deceitful.

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1 Q. And you would not want to intentionally yourself  
2 be deceitful or support deceit; correct?

3 MS. TYLER: Objection.

4 A. I'm not sure what your question is.

5 Q. Just that, a very simple one.

6 A. As an academic professional research --

7 Q. As a human being.

8 A. Okay. Which are you asking me now?

9 Q. You do not divorce yourself as a human being  
10 from yourself as a researcher, do you? You are a  
11 human being when you do research; right?

12 A. I try to separate myself as much as possible  
13 when doing research so I may be totally objective  
14 when I do it. That's the rules of the ball game in  
15 science.

16 Q. Absolutely, totally objective?

17 A. Try.

18 Q. Try?

19 A. Try.

20 Q. But when you are being totally objective in the  
21 rules of science, you want to remain and retain your  
22 elements of humanity; correct?

23 A. Yes.

24 Q. And when you are doing that, when you are  
25 retaining your elements of humanity as an objective

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1 researcher you don't want to do anything that is  
2 deceitful or fraudulent; --

3 A. In my research --  
4 Q. -- correct. Correct?  
5 A. In my research I would certainly try as  
6 diligently as ever to prevent any such deceit or --  
7 Q. Right.  
8 (Interruption by the reporter.)  
9 Q. In your testimony. In your testimony.  
10 A. I can't hear you.  
11 Q. In your testimony. Thank you. As an attempted  
12 expert, --  
13 A. Uh-huh.  
14 Q. -- as a human being and as a person testifying  
15 about either your research or the research of others  
16 you would not want to do anything that is deceitful.  
17 A. With regard to?  
18 Q. Your testimony, in regard to your words.  
19 A. Oh, I -- I would not want to be deceitful in the  
20 use of my words, no.  
21 Q. Nor would you, sir, want to support someone else  
22 who was deceitful in any way, shape or form, would  
23 you?  
24 MS. TYLER: Objection to form.  
25 Q. Would you?

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1 A. I'm in no way responsible for another human  
2 being's behavior, sir.  
3 Q. Not my question. Okay.  
4 I understand you are not responsible for mine.

5 A. That's correct.

6 Q. But you would not want to support --

7 You understand a human being can support someone

8 else, can do so in some way, intentionally or

9 unintentionally, but my question is about intent.

10 You would not intentionally as a human being and as a

11 researcher want to support someone else's deceit.

12 A. I am in no way responsible for another human

13 being's behavior.

14 Q. I don't want to ask you about that. That's not

15 the question. Let me say it again.

16 A. Try it again, please.

17 Q. You, sir, would not want as a human being or as

18 a Ph.D. researcher to intentionally support someone

19 else's deceit, would you?

20 A. I'm in no way responsible for any other human

21 being's behavior.

22 Q. I understand now that your view is you are not

23 responsible for other human beings' behavior.

24 A. That's correct.

25 Q. And I hear that; okay? But that's not the

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1 question. I'll ask it again. I'm not asking you

2 whether you are responsible for someone else's

3 behavior.

4 A. That's correct.

5 Q. Okay. That's not a question I'm asking.

6 The question I'm asking is: You, as a person of

7 academic freedom committed to objectivity, as a human

8 being and a Ph.D. would in no way intentionally  
9 support another entity's deceit, would you?

10 MS. TYLER: Objection.

11 Q. You wouldn't do that, would you?

12 MS. TYLER: Asked and answered three times,  
13 counsel.

14 A. I'm not responsible for any other individual's  
15 behavior or what they do with it.

16 Q. Okay. And that's how --

17 And I just want the record to be clear that I  
18 won't continue to ask this question but I have not  
19 had an answer to my question, and I object to it. I  
20 object to the objection of counsel and I object to  
21 the way in which the witness has not responded to my  
22 question, but I'll move on.

23 MS. TYLER: I object to your  
24 characterization.

25 MR. MANNING: I believe I'll have an

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1 opportunity when I take this up with the court,  
2 beyond my 12 hours, to come back and demand a simple  
3 answer to a simple question by a person of -- of some  
4 intelligence who can clearly understand and answer  
5 that question. I believe that will be independently  
6 determined by a court.

7 MS. TYLER: I object to your  
8 characterization of this colloquy that way. I think  
9 the witness has answered the question you have put to

10 him three times.

11 BY MR. MANNING:

12 Q. If, sir, someone who you were doing work for,  
13 let's just say lawyers -- we won't talk about the  
14 tobacco companies that are paying you yet, but let's  
15 just say lawyers; okay? Let's say someone you know  
16 you are doing work for. You know you are working for  
17 lawyers; right?

18 A. Uh-huh -- Yes.

19 Q. Now let's say that there has been deceit,  
20 blatant deceit. You would not want to support that,  
21 would you?

22 MS. TYLER: Objection to form.

23 A. I don't understand the question within the  
24 context that I work. I'm trying as desperately as I  
25 can to respond to you.

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1 Q. If in fact, sir, you found that your opinions as  
2 expressed here supported laws that you determined  
3 that behind this report with these tobacco companies  
4 that they have been blatantly lying and you found  
5 that out, would you as a matter of integrity, as an  
6 academic person of some integrity stand up and say I  
7 refuse to support that line?

8 MS. TYLER: Objection to form.

9 Q. Would you do that?

10 A. I'm not an ethicist. My expertise is not  
11 ethicism. I don't know how I would determine whether  
12 they are lying or not lying or what they were doing.



13 I give specific objective, as-best-I-can-do research  
14 information which is available in fact, and all the  
15 material I have is available to the public. It's not  
16 privately held information. It's available to  
17 anyone.

18 Q. Let me just give you a specific example, very  
19 specific; okay? You have stated previously that you  
20 believe the tobacco companies, when they state  
21 publicly that they are not interested in kids, in  
22 getting kids hooked to become smokers --

23 A. Could you show me where I said that?

24 Q. I will in a little while. But let me just ask  
25 you this question; all right? Here's my question to

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1 you. You have seen tobacco companies, you have seen  
2 it where they have stated publicly we are not  
3 interested in kids, getting kids to be smokers.

4 A. I don't think so.

5 Q. You don't recall ever having seen -- Okay.

6 Now your -- you as an expert here for these  
7 lawyers and these tobacco companies have never seen  
8 or heard a tobacco company state publicly in any way,  
9 shape or form, in written form, press release, in any  
10 press, we are not interested in kids.

11 MS. TYLER: Objection to form.

12 Q. By way of getting kids to become smokers?

13 MS. TYLER: Objection to form.

14 Q. You never heard that; right?

15 A. As I've indicated to you before, I've never seen  
16 any tobacco documents, and that I would consider to  
17 be a tobacco document so obviously I have not seen  
18 tobacco documents that indicate that.

19 Q. That wasn't my question. Listen to it closely.  
20 I very clearly said to you -- you are a very bright  
21 guy, I think -- that it's from any source, not just  
22 tobacco company documents, but you have never heard  
23 -- let me make sure you are clear in your testimony  
24 -- you have never heard from one source ever, the  
25 press, public statements by tobacco companies, in any

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1 way, shape or form ever heard the statement made we  
2 as tobacco companies are not interested in kids in  
3 any way, shape or form. You have never heard that?

4 MS. TYLER: Objection to form.

5 A. Could you break the question down in pieces so  
6 that I don't get into conflict with part A of your  
7 question, part B of your question or part C of your  
8 question? They are coming from very different  
9 sources and I find it impossible to answer your  
10 question accurately.

11 Q. Is that right?

12 A. Yes, sir.

13 Q. Because the question says have you ever heard it  
14 from any source. That's all you have to do is  
15 determine those sources and say yes or no.

16 MS. TYLER: Objection to form.

17 Q. It's quite easy. You have three sources in your

18 mind as to what the question was. What are the three  
19 sources? One is the press; right?  
20 A. I have heard the press say things.  
21 Q. So you have heard it stated in the press. What  
22 have you heard?  
23 A. That they don't intentionally want to sell  
24 cigarettes to children.  
25 Q. And when you heard that stated you know it's the

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1 tobacco companies who are making that statement  
2 through the press?  
3 A. I don't have the slightest idea if that's the  
4 truth, none whatsoever, and I do not assume that.  
5 Q. Great. But you have at least heard the  
6 statement in the press tobacco companies are not  
7 interested in targeting kids; correct?  
8 A. That's correct.  
9 Q. Okay. Now I'll ask you this as an expert;  
10 okay? I want you to assume for a moment -- not very  
11 big assumption, very little one -- I want you to  
12 assume for just a moment that that statement in the  
13 press was as a result of some type of press release  
14 or statement by the tobacco industry or tobacco  
15 company; okay?  
16 A. Such an assumption would be so foreign to me as  
17 to be objectionable.  
18 Q. But you are asked and I am permitted to do so as  
19 a matter of law and rules; okay? So for purposes of

20 the question, now, you made it clear you don't do  
21 that professionally, and I understand that and the  
22 court does and the jury does, but we are allowed to.  
23 A. Okay.  
24 Q. Because you understand this is  
25 cross-examination; right?

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1 MS. TYLER: Objection to form.  
2 Q. Right?  
3 A. Yes.  
4 Q. So now assume that; okay? You understand what  
5 we are assuming?  
6 A. If you will repeat it, please.  
7 Q. That that statement that you are aware of that's  
8 been made in the press, the tobacco companies aren't  
9 interested in targeting kids to get them to become  
10 smokers, I want you to assume ever so slightly that  
11 assumption, that that's been made by tobacco  
12 companies; okay?  
13 A. If you wish me to make that assumption, I will  
14 move to the next step.  
15 Q. Thank you. Now the next step I want you to  
16 assume -- okay? -- the next step I want you to assume  
17 is that there are hundreds, at a minimum, of  
18 documents in which tobacco companies talk amongst  
19 themselves as a company as well as between companies  
20 and state that they are interested, vitally  
21 interested in 12 year olds and 14 year olds and 16  
22 year olds, kids under 18; okay?

23 A. And now I have to assume that they are imaginary  
24 documents.  
25 Q. I want you to assume -- I'm --

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1 For purposes of this assumption, I'm  
2 representing to you those documents exist and state  
3 that. Okay?  
4 A. But right now my assumption, they are imaginary.  
5 Q. That's fine. That's fine.  
6 A. Sure, there is an imaginary assumption and now  
7 there is an imaginary document.  
8 Q. That's right, because you haven't seen them.  
9 That's right.  
10 And if documents like that existed and stated  
11 explicitly we want kids and we want to get them and  
12 we want to hook them and it's -- those documents are  
13 contrary to public statements, say the opposite, then  
14 for you as a Ph.D. and a human being you would  
15 conclude, if those things were true, that that public  
16 statement was a lie, wouldn't you?  
17 MS. TYLER: Objection to form.  
18 A. No.  
19 Q. And why wouldn't you conclude that's a lie, sir,  
20 as a Ph.D.?  
21 A. I have to make an assumption, your assumption,  
22 of imaginary documents over -- written by persons who  
23 I don't know who they are or why the document was  
24 written or who it was written to and whether the

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1 produced an action or it may have produced a decision  
2 or it produced some change in someone's behavior. I  
3 think I could get a superficial contradiction between  
4 what -- the imaginary documents and the assumption we  
5 made reported in the press. This is Alice in  
6 Wonderland, but it's all right if that's where we  
7 want to be. We don't have anything at this point  
8 other than a superficial contradiction. That -- I  
9 think someone would have to present something to  
10 reduce it out of, not just the Mad Hatter.

11 Q. Okay. So you believe that what I just indicated  
12 by asking you to make the assumptions in the  
13 hypothetical question that I asked you, that at least  
14 it would appear to be a superficial contradiction.

15 MS. TYLER: Objection to form.

16 Q. Is that correct?

17 A. That's the best I could get out of what you  
18 might have.

19 Q. That's fine. So in your view what I presented  
20 to you is not a lie, it's at best a superficial  
21 contradiction.

22 MS. TYLER: Objection to form.

23 Q. Correct?

24 A. No. That's as best I can do right now.

25 Q. Okay. Now what I want you to further assume --

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1 okay? -- is that in those documents that we just  
2 talked about that you went on and said you would need  
3 to, in order to get to the lie point you would need  
4 to know, I mean was there action taken upon those,  
5 did it have an effect, on and on and on, and I want  
6 you to assume further that these documents say we  
7 want 14 year olds, we know we can get them, other  
8 people are going to get them, other people are  
9 getting them, here's how they got them, here's how we  
10 are going to go about getting them, and they go about  
11 it and they do it and they get them and they hook  
12 them and they can prove their sales directly as a  
13 result of their actions, and they prove it in their  
14 own internal documents statistically. Please assume  
15 that; okay?

16 MS. TYLER: Objection to form.

17 Q. Are you with me?

18 A. Uh-huh, I'm with you.

19 Q. Furthermore, furthermore, I want you to assume  
20 with me that after that point in time that company  
21 continues to say publicly we are not interested in  
22 kids at all. We are not interested in kids, we are  
23 only interested in adult switchers. We are not  
24 interested in having a kid ever in America start  
25 smoking. With those two statements that I made, and

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1 assumptions, if in fact those two assumptions are  
2 correct then the public statement we are not  
3 interested in kids is a bald-face lie, isn't it?

4 MS. TYLER: Objection to form.

5 Q. You can do it on assumption.

6 A. I have no idea. I have no expertise in any way  
7 of understanding where we are at this point and where  
8 you are leading me and what is the response that you  
9 would like to retain or gain from me because I'm  
10 lost.

11 Q. Here's what I want, I want the truth. That's  
12 all I want. All I want is the truth.

13 A. I'm trying to give it to you, but it's all a set  
14 of assumptions, so no truth exists.

15 Q. No, that's not true, sir. I want you to back  
16 up. Your lawyer, believe me, would be objecting  
17 vociferously if this were improper, and it's not  
18 improper. I can ask you -- I can ask you  
19 hypothetical questions and --

20 A. I'm not objecting.

21 Q. Right. And everybody understands what the  
22 hypothetical is, and I've defined it; okay? So I  
23 don't want you to back off the hypothetical. I know  
24 you don't like them and you don't like to make  
25 assumptions as a researcher, and I understand that.

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1 A. I make assumptions all the time as a researcher.

2 Q. Fine. Then listen to those assumptions and  
3 answer the question within the assumptions. I



4 understand you may disagree with the assumptions, I  
5 understand you may think the documents don't show  
6 what I've indicated. I understand lots of things so  
7 I'm giving you all that; all right?

8 A. Uh-huh.

9 Q. But listen to the question.

10 If in fact there are documents by a company that  
11 says we are interested in 14- and 16-year-old kids  
12 and we want to hook them and we got to get them  
13 smoking now for our brand choice, and we want to do  
14 it for profits, and they do it and they say they do  
15 it and they show statistically that they have done it  
16 and their sales increase as a result of it and they  
17 are happy about it and they reflect that internally  
18 in documents and they, after they do that, state  
19 publicly that we don't ever even discuss kids or are  
20 even interested in kids. If they said that publicly  
21 after they had done it internally, if they said that  
22 publicly, that statement publicly it's a bald-face  
23 lie; correct?

24 MS. TYLER: I object to the form of this  
25 question, and for the record, Mr. Manning, I have

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1 objected to the form of every question you have asked  
2 for the last five minutes.

3 MR. MANNING: You can have a standing  
4 objection to form, as you know, and the judge has  
5 explicitly said in his orders that all objections as  
6 to form are preserved, and you know that. And you

7 have violated that order consistently all morning,  
8 and if that's what you want to do and want to persist  
9 in doing, I will make a decision when I decide to  
10 take it up. But you know full well, and the lawyers  
11 sitting next to you know full well that that is what  
12 this judge has indicated to everybody, all objections  
13 to form. If there is a question as to privilege or  
14 anything else the judge has said you are to object,  
15 and you have done so. And I have -- have  
16 acknowledged the objections by not continuing  
17 questioning in areas that you have objected to in  
18 privilege so that you have not even had to instruct  
19 him not to answer. But you are out of bounds with  
20 your form objections and you know it.

21 MS. TYLER: Mr. Manning, I am not out of  
22 bounds.

23 MR. MANNING: You are out of bounds.

24 MS. TYLER: And counsel for defendants have  
25 asked that you point to us, direct our attention to

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1 the orders --

2 (Interruption by the reporter.)

3 MS. TYLER: You are required to let me  
4 finish. We have asked that you direct my attention  
5 to the order of the court which does not permit me to  
6 make objections to form. Until you do so I will not  
7 even consider your objection to my objections. I  
8 will continue to make objections. When you make a  
9 representation on the record that counsel for

10 defendants would have been objecting to these  
11 questions vociferously if they had problems with  
12 them, which is a misrepresentation of my conduct, I  
13 will point it out. Expect it.

14 MR. MANNING: Great. Thank you.

15 Let me just say you are bound to know the court  
16 orders when you walk in here. I don't have to  
17 interrupt my cross-examination to show them to you.  
18 I will, before the end of the day, show them to you,  
19 but I'm not going to do it at this moment. But I  
20 know that your lawyers here with you, John and your  
21 lawyer from Dorsey, Mark Ginder, are fully  
22 knowledgeable and they can show you, even go look at  
23 them and assist you if there is any lack of clarity,  
24 but evidently you have chosen not to do that and say  
25 it's my burden. When I have the opportunity I will

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1 respond, but you know what I'm talking about.

2 MS. TYLER: Mr. Manning, I will assert I am  
3 intimately more familiar with the stipulated order  
4 regarding the protocol of conducting expert witness  
5 depositions in this case and that has been borne  
6 witness all day today. Why don't you continue with  
7 your questions.

8 MR. MANNING: Thank you.

9 David, if I can have the last question repeated  
10 that I asked, I'd appreciate it. If you can't do it,  
11 I understand. If you can, I'd appreciate it.

12 (Record read.)  
13 MS. TYLER: Objection.  
14 A. I have no grounds upon which to respond to the  
15 answer. I'm not an expert in the area of such a  
16 complex question and I would ask to be allowed to  
17 refrain from responding.  
18 Q. You are not so allowed, sir.  
19 A. I --  
20 Q. You do understand the words of my question.  
21 A. There are many words in your question. It's far  
22 larger a question than I can comprehend.  
23 Q. If a company says I'm not interested in kids at  
24 all, publicly, and in fact internally reflects in a  
25 variety of ways that they are very interested in

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1 kids, that that statement publicly "I'm not  
2 interested in kids" is a bald-face lie; correct?  
3 MS. TYLER: Objection.  
4 A. I have no grounds to know the relationship  
5 between A and B so I'm -- I don't think I can do  
6 that. I'm trying as hard as I can as a scientist to  
7 get from A to B. I don't think -- I can't get from A  
8 to B.  
9 Q. Can you try as a human being?  
10 A. I'm trying.  
11 Q. Are you? Can you try?  
12 MS. TYLER: Objection.  
13 A. Sir, I'd have to say I cannot draw that  
14 conclusion.

15 Q. Do you think it's acceptable to lie, for a  
16 corporation to lie to the American people?

17 MS. TYLER: Objection.

18 Q. Do you think that's acceptable?

19 A. In comparison to what?

20 Q. Well just -- I prefer not to compare it to  
21 anything.

22 A. I need some comparison, some basis, some grounds  
23 to understand.

24 Q. I need to understand what your ethical standards  
25 are yourself.

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1 A. And I appreciate that.

2 Q. If you can't answer this question, then we need  
3 to explore that for the jury as to why you can't.

4 A. I think that's fine.

5 MS. TYLER: Objection.

6 Q. So do you, sir, think it is acceptable in any  
7 way, shape or form for a corporation to lie,  
8 blatantly?

9 A. I don't know what the terminology or the context  
10 of is acceptable to lie, of what manner to lie, what  
11 the acceptable consequences are allowed to lie and as  
12 -- I'm not an ethicist, one; I'm not a corporate  
13 ethicist, two, which I believe their ilk of persons,  
14 so the question being asked without any -- you are  
15 asking me without any format, without any context  
16 within which to place a single action, of which there  
17 is no action there is only a hypothetical. I'm

18 lost.

19 Q. That's good. So do you think that a corporate  
20 ethicist will have to slice and dice about whether or  
21 not a lie is acceptable? Because I'm just asking you  
22 a very straight, simple question.

23 A. I don't know.

24 MS. TYLER: Objection to form.

25 Q. I'm asking you a simple question.

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1 A. I have no idea.

2 Q. Do you believe it's acceptable for a  
3 corporation, people within it, though, because you  
4 know the corporation's only made up of people;  
5 right? Right?

6 A. Now we have a new concept.

7 Q. You understand that a corporation only speaks  
8 through human beings, the corporate legal entity  
9 can't speak by itself.

10 A. No, I don't know that. I have no idea. Once we  
11 are in a legal format, sir, I'm sorry, I do not know.

12 Q. Let me just say to you a corporate legal entity  
13 has no human voice. The human voice that is breathed  
14 -- The voice that's breathed into it is one of human  
15 beings; okay?

16 A. Is that an assumption I'm to make?

17 Q. Yes, please make that assumption.

18 A. Okay.

19 Q. Now if people at a corporation speak publicly in

20 any way, shape or form, do you think it's acceptable  
21 for them, when they speak publicly to the American  
22 public, to lie?

23 MS. TYLER: Objection.

24 A. I have no opinion.

25 Q. I'm not asking for your opinion.

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1 A. I have no opinion.

2 Q. Do you as a human being, do you as a human being  
3 and also a behaviorist who attempts to do objective  
4 research, believe that it's acceptable for a  
5 corporation to lie?

6 MS. TYLER: Objection.

7 A. I have no opinion.

8 Q. You have no opinion about that?

9 A. I have no opinion.

10 Q. And you have no opinion as a human being?

11 A. I have no opinion.

12 Q. Okay. Now I'm not asking you whether you have  
13 an opinion, okay? Because you are not entitled,  
14 pursuant to these rules, to tell me you don't have an  
15 opinion. You do understand the question; right?

16 A. So I have to have an opinion?

17 Q. It's not calling for an opinion.

18 MS. TYLER: Objection. Mr. Manning, you  
19 just asked him for an opinion. I can have the court  
20 reporter read back the question where you asked him  
21 for an opinion.

22 Q. Do you, sir --

23           Here is the question, tell me if you don't  
24 understand it.  
25 A.    Okay.

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1 Q.    Do you think it's acceptable for individuals in  
2 a corporation to state publicly to the American  
3 public things that they know are lies?  
4 A.    I have no opinion.  
5 Q.    The question wasn't do you have an opinion. The  
6 question is: Do you understand my question? Do you  
7 understand that?  
8 A.    I understand your question.  
9 Q.    So please answer.  
10 A.    I have no opinion.  
11 Q.    Okay. And I am not asking you if you have an  
12 opinion or not. I've asked you to answer the  
13 question that you have acknowledged you understand,  
14 and you need to ask -- answer that question as a  
15 matter of rules of court, because you understand the  
16 question as any human being would understand the  
17 question, so it wouldn't be credible to say you don't  
18 understand it. The only way to avoid it is to say I  
19 have no opinion, but I'm not asking for an expert  
20 opinion, I'm asking just for an answer to a simple  
21 question.  
22           And here it is again: Do you think it is  
23 acceptable for individuals, human beings, persons,  
24 men and women within corporations to make statements



25 to the public that they know are false?

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1 MS. TYLER: Mr. Manning, objection, he has  
2 answered the question three, four, five times now.  
3 A. I have no opinion and therefore I could not  
4 render you a yes or no because I must have an opinion  
5 before I can answer a yes or no, for it is the  
6 opinion that drives my answer. I've tried -- I  
7 would, but I'm misunderstanding you totally.

8 MR. MANNING: Let's take a break.

9 (Recess taken from 10:07 to 10:20 a.m.)

10 BY MR. MANNING:

11 Q. Sir, do you read on a regular basis, daily  
12 basis, Wall Street Journal, New York Times?

13 A. Yes.

14 Q. Which ones; both?

15 A. Both.

16 Q. You subscribe to both?

17 A. Yes.

18 Q. Have you read, shall we say, religiously the,  
19 for example, the Wall Street Journal with respect to  
20 the tobacco issues over the last two years?

21 A. I wouldn't use the word "religious," no.

22 Q. Most every day?

23 A. I try.

24 Q. And likewise the New York Times?

25 A. Yes.

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1 Q. And you have particularly followed that because  
2 it's something that you are involved in and working  
3 with?

4 MS. TYLER: Objection.

5 A. No.

6 Q. You followed it then because you are interested?

7 A. I teach a course in sociology of law and it's of  
8 interest of me. I follow corporations so students  
9 have examples of what's going on.

10 Q. So you teach a course in the sociology of law?

11 A. Yes.

12 Q. At where, what school?

13 A. At Tulane.

14 Q. And are you teaching it this semester?

15 A. No.

16 Q. When do you teach it, spring or --

17 A. Spring.

18 Q. Did you teach it last spring?

19 A. Oh, yes.

20 Q. In the course that semester did you speak about  
21 the tobacco case?

22 A. Last spring. Last spring, if we got to it,  
23 tangentially, probably really tangentially. Not  
24 saying that would be normal or abnormal. You can  
25 only cover so many cases in 12 hours -- 12 semester

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1 -- semester with 12 four-hour sessions in it, but  
2 probably said something, sure.  
3 Q. Do you have a syllabus for the course?  
4 A. Sure.  
5 Q. Is it an outline, a syllabus, what is it?  
6 A. It's a syllabus.  
7 Q. How thick is it?  
8 A. Two pages.  
9 Q. Two-page syllabus for the course?  
10 A. Yes.  
11 Q. That's what you teach from?  
12 A. Yes.  
13 Q. And the underlying materials in it that the  
14 syllabus references?  
15 A. Yes.  
16 Q. And that's something you obviously have in your  
17 office, that syllabus?  
18 MS. TYLER: Objection.  
19 A. I hope so.  
20 Q. That's something you could get? You wouldn't  
21 have to go to Mr. Beal or somebody, you could get  
22 that right out of your office?  
23 A. I won't give it to you, but yes.  
24 Q. We will talk about that later. The point is you  
25 have it; right?

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1 A. I have it.  
2 Q. We will talk with your lawyers about that.  
3 MS. TYLER: Objection.

4 Q. What did you say in your course about the  
5 tobacco litigation?

6 A. I couldn't possibly recall at this time.

7 Q. Not --

8 A. "Litigation"? I didn't say anything about  
9 litigation. I don't know anything about litigation.

10 Q. What did you say about the tobacco companies?

11 A. Reference to large corporate America, that's  
12 all.

13 Q. And when -- when you --

14 So all you said that you recollect as you sit  
15 here today of what you said last spring in your  
16 course is that you said they are a reference to large  
17 corporate America; is that right?

18 A. That's probably for the last spring, yeah. I  
19 think we have -- Yeah, I think so, yeah. They are a  
20 reference point, a piece, a part, being integrated  
21 under Ungerian welfare, state legal relationships,  
22 they would fall amongst that and many others.

23 Q. Hungarian?

24 A. Ungerian.

25 Q. Ungerian? What do you mean by that?

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1 A. As written by Roberto Unger, probably one of the  
2 most outstanding scholars of behavioral law.

3 Q. Great. And what did --

4 How did the tobacco companies fit under Ungerian  
5 what? Tell me, educate me. What did you say?

6 A. Sir, I'm not prepared, nor did I come today

7 prepared to give a lecture on Ungerian legal theory.  
8 I think its inappropriate. I'm unable to. I'm happy  
9 -- I'm happy to go back and get my notes and think  
10 about it for a period of time, how I'd present it to  
11 you. It's a complex set of materials which I assume  
12 not a whole lot of people understand.  
13 Q. What I want to know, what did you say about the  
14 tobacco companies in your course?  
15 A. And I already said to the record, I said what I  
16 said in general terms. I've already put that to the  
17 record, I believe. I'm sorry.  
18 Q. I don't believe you have.  
19 A. Okay. Then ask the question, I will try to  
20 respond.  
21 Q. That's why I'm asking you again.  
22 MS. TYLER: Objection.  
23 Q. What did you say? Tell this jury right now  
24 everything you can remember that you said in your  
25 course in the spring about the tobacco companies,

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1 everything.  
2 A. That would be impossible for me to tell you  
3 everything that I said some six months ago, and would  
4 be beyond a reasonable to request of me but I will  
5 attempt to recall as best I can.  
6 Q. That's all I'm asking.  
7 A. No, you asked me to recall everything I said.  
8 Q. As best you can is what I said.

9 A. You did not say that.

10 Q. I told you that earlier, that's always what I'm

11 asking you, and you said you understood that. I'm

12 never asking you to do something beyond your best

13 recollection, ever.

14 A. My best recollection, as I indicated before,

15 under that Ungerian welfare state that the tobacco

16 industry, as well as other corporate entities, face a

17 changing relationship and changing social

18 environment, which is ever changing in terms of its

19 expectations.

20 Q. What do you mean by an "Ungerian welfare

21 state"? What did you mean by that?

22 A. Suggestion is that as -- What that means is

23 that's -- the state is coming out of post-industrial

24 society. There is an atomization or stratification,

25 if you will, of needs and wants by the American

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1 public and that those different groups will compete

2 and demand to request some sharing of the wealth and

3 power, expertise, social prestige, state of esteem,

4 and the different groups will find that the law

5 represents them in greater or lesser degree, and

6 related under greater or lesser degree that they will

7 attempt to gain more opportunity under the law, and

8 that there will be a natural wrestling back and forth

9 and an evolution which will arise back to some form

10 of bureaucratization of law by which is meant the

11 more direct atomization of all concerns. And the

12 handling of the law within the few suggested that  
13 during this latter period of time that there will be  
14 struggles as different subpopulations of the society  
15 attempt to gain right and privilege in the face of  
16 the law, and we see that today.

17 Q. How do we see that today, sir?

18 A. We see that with affirmative action, we see that  
19 with individuals pressing cases against society for  
20 whatever items they may wish or want. They build  
21 groups together -- I always mess up the term --  
22 class-action suits, we get a larger group of people  
23 together. It would be trying to push some benefit  
24 forward. So we see those patterns, but the patterns  
25 are cyclical patterns moving about a bureaucratic

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1 law, moving to idiosyncratic law, moving back and  
2 forth. I mean, trying to write questions of  
3 modernity.

4 Q. "Modernity"?

5 A. Modernity.

6 Q. What do you mean by that?

7 A. Modern, how things change and become new,  
8 modernity.

9 Q. And how did you relate this, if at all, to the  
10 tobacco industry?

11 A. Just the list of all the types of corporations  
12 at any one point in time that may be having suits  
13 brought against them by larger portions of society,

14 that this could be, you know, quite natural. These  
15 aren't things that happen just by random action.  
16 Q. Now you would agree with me a manufacturer knows  
17 more about the product than anybody else.  
18 A. I wouldn't know about that.  
19 Q. Would you agree that a manufacturer should know  
20 more about its product than anyone else?  
21 A. I wouldn't know anything about that, either.  
22 Q. You wouldn't agree with that?  
23 MS. TYLER: Objection.  
24 A. I said I didn't know anything about it. I  
25 wouldn't know.

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C O N F I D E N T I A L

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1 Q. Do you agree that nicotine is a drug, sir?  
2 A. I'm not an M.D., I wouldn't have any expertise  
3 in the area.  
4 Q. You smoked for how long yourself?  
5 MS. TYLER: Objection.  
6 Q. How long did you smoke, 40 years?  
7 A. Started when I was 15, I believe, and then off  
8 and on, smoked until I was -- if you allow me to get  
9 to the end of the month, until I was 46. During that  
10 time I quit for periods of eight years, six years,  
11 four years, whatever.  
12 Q. So you smoked off and on between 15 and 46?  
13 A. Right, so that would be about 31 years minus a  
14 lot of years. Minus, I don't know, more than 10 I  
15 would think, 10 or 12.  
16 Q. And what brand did you choose to smoke?



17 A. Lots of different cigarettes over that period of  
18 time.  
19 Q. Which ones did you smoke?  
20 A. Old Golds. I don't think they make those  
21 anymore.  
22 Q. Old Golds, what else?  
23 A. Salem.  
24 Q. What else?  
25 A. Marlboro.

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1 Q. Anything else?  
2 A. Merits.  
3 Q. Anything else?  
4 A. Carltons.  
5 Q. Anything else?  
6 A. Marlboro Lights.  
7 Q. Anything else?  
8 A. Larks.  
9 Q. Larks. Anything else?  
10 A. Camels.  
11 Q. Camels. Anything else?  
12 A. Lucky Strikes.  
13 Q. Anything else?  
14 A. Benson & Hedges.  
15 Q. Any other ones?  
16 A. English Ovals.  
17 Q. Anything else?  
18 A. Raleighs.

19 Q. Anything else?  
20 A. Winstons.  
21 Q. Anything else?  
22 A. Alpine.  
23 Q. Anything else?  
24 A. Pall Mall.  
25 Q. Anything else?

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1 A. Chesterfield.  
2 Q. Anything else?  
3 A. Right now that probably covers a good number of  
4 them, anyway.  
5 Q. Did you chew as well?  
6 A. No.  
7 Q. Smoke pipes as well?  
8 A. Yes.  
9 Q. For how long?  
10 A. Woo.  
11 Q. Smoke pipes during the times you would quit  
12 cigarettes?  
13 A. No, no, same time. I would say about age 16  
14 through about '69, so that's -- I'm 43, '69, 46.  
15 Q. That's fine. Are there any one of these brands  
16 or two or three that stick out as more of your brand  
17 choice as -- over periods of time than others, of the  
18 16 that you named for me?  
19 A. Sixteen? I'd say the Old Golds, Carltons. I  
20 smoked Carltons in all different varieties, the  
21 Carltons and Marlboros. Those would be.

22 And if I can correct the record, I did chew  
23 tobacco but I didn't chew it very often, very, very  
24 seldom.  
25 Q. Smoke cigars as well?

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1 A. Oh, yes.  
2 Q. Over the same periods of time, off and on?  
3 A. No. I would say from about '70 to '75, smoked  
4 passing cigars. I enjoyed a cigar once in a while,  
5 but never on a regular basis.  
6 Q. Uh-huh. Do you agree that a cigarette is a  
7 nicotine delivery system?  
8 MS. TYLER: Objection.  
9 A. Is a cigarette a nicotine delivery system? No,  
10 I don't know what's in the cigarette. I don't know.  
11 I'm not an expert in what is in that cigarette.  
12 Whatever -- It delivers whatever is in that  
13 cigarette.  
14 Q. Do you know that there is nicotine in that  
15 cigarette?  
16 A. Professionally or personally?  
17 Q. Either.  
18 A. Well --  
19 Q. Either.  
20 A. Yes.  
21 Q. So you know that if there is nicotine in there  
22 that it is a nicotine delivery system?  
23 MS. TYLER: Objection.

24 A. Just a human being, I assume there is nicotine  
25 in them. I'm pretty pessimistic in the world so I'm

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1 assuming there is nicotine in there or something in  
2 there.

3 Q. Why are you assuming that, sir?

4 A. Because everybody fusses about it so I'm  
5 assuming it's there.

6 Q. Why do you think people fuss about it, do you  
7 know?

8 A. Some people want more of it, some people want  
9 less of it, some people feel it has some  
10 consequences, the nicotine itself. I have not read  
11 medical literature to a point where I'd be able to  
12 render an opinion about what the consequences of  
13 nicotine are because I'm not an M.D. and I don't have  
14 anything to do with toxicology so you are way beyond  
15 my level of expertise.

16 Q. Have you read enough to know that nicotine is  
17 addictive?

18 MS. TYLER: Objection.

19 A. I have no ability to indicate whether it would  
20 be or wouldn't be addictive. I don't know what that  
21 means, to be addictive. It's not an area of my  
22 expertise.

23 Q. You don't know what it means for nicotine to be  
24 addictive?

25 A. No, I do not.

C O N F I D E N T I A L

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1 Q. Have you ever asked any of these lawyers that  
2 you've talked to on the telephone and met with the  
3 hundreds of times that you have spoken about by way  
4 of contacts that you have had with them that -- have  
5 you ever asked them once that you would like yourself  
6 to talk with someone from a tobacco company?

7 A. Just talk to them?

8 Q. Yeah.

9 A. No.

10 Q. Have you ever asked to talk to a tobacco company  
11 scientist?

12 A. Absolutely not.

13 Q. Have you ever asked to talk to a tobacco company  
14 executive?

15 A. No.

16 Q. Have you ever asked to talk to a tobacco company  
17 advertising specialist?

18 A. No.

19 Q. Have you ever asked to talk to the person within  
20 the tobacco company who knows most about advertising  
21 to children?

22 MS. TYLER: Objection.

23 A. Within the company -- I'm lost on the last --

24 Q. Have you ever asked one of these lawyers, Julia  
25 Tyler, pick her as an example, or Allen Purvis, said,

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1 "Julia or Allen, I want to talk to the person in the  
2 tobacco company here who is the expert or knows most  
3 about how to market to children"?

4 MS. TYLER: Objection.

5 Q. Have you ever asked that?

6 A. No.

7 Q. And hence you have never talked to anybody  
8 within a tobacco company or anybody from the tobacco  
9 industry who has been knowledgeable about marketing  
10 to children, have you?

11 MS. TYLER: Objection.

12 A. Not to my knowledge.

13 Q. Now -- And you have never asked to.

14 A. Not to my knowledge.

15 Q. Sir, you would agree with me that smoking causes  
16 lung cancer; correct?

17 MS. TYLER: Objection.

18 A. I'm not an M.D. You are outside my area of  
19 expertise.

20 Q. I know you are not an M.D.

21 A. Right.

22 Q. What I'm asking you is: Do you agree that  
23 smoking can in fact cause lung cancer?

24 A. Sir, you are outside of my area of expertise. I  
25 have no idea. You are way beyond where I work.

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C O N F I D E N T I A L

1 Q. So the record's clear, you have no idea, is that  
2 what you want to say to this jury, you --

3 A. I have no professional opinion with regard to

4 the relationship of tobacco and nicotine and you are  
5 exceeding my area of expertise, which has to do with  
6 behavioral consequences of high risk healthcare  
7 behavior, health behaviors.

8 Q. The consequences of high-risk health behavior;  
9 is that right?

10 A. Yes, sir.

11 Q. You as an individual, sir, do you know that  
12 smoking causes lung cancer?

13 A. No.

14 Q. You don't know that?

15 A. No.

16 Q. You have no idea about that?

17 A. No.

18 Q. Do you as an individual, sir, have any idea  
19 whether smoking causes pulmonary disease of any type?

20 A. As an expert, no, I have no idea.

21 Q. As an individual.

22 A. I only stand on what the Centers for Disease  
23 Control will produce for documentation. I -- What  
24 their relationships are are specified. That's a  
25 document that I read. It is the behavioral

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1 relationships and what they say. I tend not to  
2 question what the epidemiologists report.

3 Q. And what do they say? Have you read it?

4 A. They say -- Of course.

5 Q. What do they say?

6 A. They show a relationship between smoking and  
7 morbidity and mortality.  
8 Q. And so you have read epidemiological reports  
9 from the CDC and you understand epidemiology?  
10 A. Of course.  
11 Q. That's something you work in?  
12 A. Of course.  
13 Q. And you understand the statistical  
14 epidemiological correlations?  
15 A. At least most of it, I hope.  
16 Q. And you understand that it has been stated by  
17 the CDC that smoking does in fact cause lung cancer.  
18 MS. TYLER: Objection.  
19 A. They state that there is a relationship in there  
20 between -- association between exposure to cigarette  
21 tobacco and various levels of prevalence and  
22 incidence of various diseases, and I'm not trying to  
23 avoid anything, that's what they try to say.  
24 Q. And you have read those?  
25 A. Absolutely.

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1 Q. And you read those professionally?  
2 A. Absolutely.  
3 Q. And so you know professionally there is a  
4 relationship between smoking and lung cancer?  
5 MS. TYLER: Objection.  
6 Q. Correct?  
7 A. There is some compromise in some portion of the  
8 population of the exposure. Whether it's dose



9 specific or not I do not know, but the incidence and  
10 prevalence indicate there is some relationship, there  
11 is certainly something going on.

12 Q. There is some relationship between smoking and  
13 pulmonary disease in general; correct?

14 MS. TYLER: Objection.

15 Q. You have read that?

16 A. Yes.

17 Q. You have read that there is a -- some  
18 relationship between smoking and heart disease. You  
19 have read that?

20 MS. TYLER: Objection.

21 A. There is an incidence and prevalence  
22 relationship, how dose specific it is I don't know.

23 Q. I understand. You know that there is a  
24 relationship between smoking -- an epidemiological  
25 relationship between smoking and larynx cancer;

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1 correct?

2 MS. TYLER: Objection.

3 A. There is some association there, yeah.

4 Q. You know that there is an epidemiological  
5 relationship between smoking and oral or mouth  
6 cancer; correct?

7 MS. TYLER: Objection.

8 A. I don't immediately recall this minute how it's  
9 broken down in the MMWR, but they certainly break it  
10 down in enough ways to indicate that there is an  
11 association somewhere in there, yes.

12 Q. Do you also agree that there is an  
13 epidemiological relationship between smoking and  
14 esophageal cancer?

15 MS. TYLER: Objection.

16 A. If that's specifically reported as one of their  
17 items, yeah, I --

18 Q. You don't remember right now?

19 A. Right this second I don't remember how they  
20 break down the whole thoracic section, but whatever  
21 it is there is certainly impact areas all through  
22 that area.

23 Q. You understand from an epidemiological  
24 standpoint there is a relationship between smoking  
25 and strokes, and the incidence of strokes; correct?

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1 MS. TYLER: Objection.

2 A. I'm real fuzzy on that but there is sort of the  
3 -- I'm really fuzzy on that part, but that's  
4 recorded there. That certainly -- There is certainly  
5 myocardial infarction.

6 Q. Do you understand that there is an  
7 epidemiological relationship between smoking and  
8 emphysema?

9 MS. TYLER: Objection.

10 A. There is some association there.

11 Q. You understand that there is an epidemiological  
12 relationship between smoking and arterial sclerosis?

13 MS. TYLER: Objection.

14 Q. Yes?

15 A. Yes. I'm sorry.

16 Q. You understand there is an epidemiological  
17 relationship between intrauterine growth retardation  
18 and smoking?

19 MS. TYLER: Objection.

20 A. Yeah, there is something going on there.

21 Q. And you also understand there is a relationship,  
22 epidemiological relationship between smoking and  
23 bladder cancer; correct?

24 MS. TYLER: Objection.

25 A. So recorded by the CDC, I believe.

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1 Q. And you also understand there is an  
2 epidemiological relationship between smoking and  
3 pancreatic cancer; correct?

4 MS. TYLER: Objection.

5 A. I believe so recorded or indicated that there --  
6 Some of this gets fairly far afield. I'm not an  
7 M.D., so I'm saying what they record and what they  
8 put in the document. I just --

9 Q. But you agree from an ethical standpoint a  
10 manufacturer has a duty and responsibility to  
11 understand the health effects of its products.

12 MS. TYLER: Objection.

13 A. In today's environment I think there is a sense  
14 in society that that's appropriate. I'm not -- Once  
15 again, I'm not an ethicist and I don't know what  
16 corporations are supposed to know or not know about

17 the products they have.

18 Q. Basic common sense that if it goes out the door,  
19 you made it and you are going to make a lot of profit  
20 from it and put that money in your pocket, you ought  
21 to know the health effects of that thing you put out  
22 the door; correct?

23 MS. TYLER: Objection.

24 A. No, sir, I couldn't say that's correct.

25 Q. You couldn't say?

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1 A. Not even as a non-ethicist, I couldn't say that.

2 Q. Great. And also from an ethical standpoint do  
3 you believe that a manufacturer has a duty to test  
4 its products for health effects?

5 MS. TYLER: Objection.

6 A. I'm not a professional ethicist so I don't know  
7 what they should test or not test and what they are  
8 responsible for or not responsible for. Those are  
9 legal issues as well as ethicist issues and I'm  
10 afraid they exceed the complexity -- I'm just a  
11 meager scientist and researcher and you are way, way  
12 outside my boundaries of just even living.

13 Q. From the standpoint of common sense do you  
14 believe, sir, as a human being and as a researcher  
15 that a manufacturer who puts a widget out the door  
16 who is going to profit from it and put money in its  
17 pocket from it has a responsibility to test that  
18 product?

19 MS. TYLER: Objection.

20 A. I don't have a question in front of me.

21 MS. TYLER: Why don't you read it back. I  
22 believe there is one.

23 THE WITNESS: I believe there is an  
24 incomplete question in front of me.

25 (Record read.)

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1 A. I don't -- I can't answer the question. There  
2 are no boundaries on it. You have to put some  
3 boundary on it. Just ask anything, its height, its  
4 weight.

5 Q. Test for its health effects.

6 A. Only if society so deems it.

7 Q. Do you believe that society does so deem it?

8 A. I don't have any product in front of me now.

9 Q. Any product.

10 A. No, I can't answer the question. It's -- Once  
11 -- We are back to Alice in Wonderland. Any product,  
12 anytime, anyplace on the face of the earth? I'm  
13 sorry, I can't answer this question.

14 Q. Do you think a manufacturer of a cigarette has a  
15 duty and a responsibility to test for the health  
16 effects of its cigarettes?

17 MS. TYLER: Objection.

18 A. If society so deems they wish that done, then  
19 they should do it.

20 Q. Do you believe that society does so deem?

21 A. I don't think so. No, I don't believe so.

22 Q. And you would not so deem?

23 A. I think that's the FDA's responsibility, if I'm  
24 confused, they are supposed to test the cigarette.  
25 Q. So that's your testimony, that society has

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1 determined that FDA ought to test the cigarette for  
2 its health effects, not the manufacturer?

3 MS. TYLER: Objection.

4 Q. Right?

5 A. I don't like chickens and foxes guarding each  
6 other. No, I think the federal government has that  
7 social responsibility, I think. That's just my  
8 ignorance. I'd say I'd like the government to test  
9 the cigarette. I don't --

10 Q. You would like the government to test the  
11 cigarette because you don't trust the manufacturer?

12 MS. TYLER: Objection.

13 A. No, I think the testing should be done as  
14 independently as possible.

15 Q. Do you think the cigarette manufacturer also  
16 ought to test for the health effects of its products  
17 and disclose those tests?

18 MS. TYLER: Objection.

19 A. It's irrelevant to me. I have no --

20 Q. Why is that irrelevant to you?

21 A. You know, they want to do that, I guess that's  
22 up to them. They can do it if they wish. They could  
23 be court ordered to do it, they could be told to do  
24 it. I would like to see an objective third party do  
25 testing. I'm not criticizing anyone. I just, as a

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1 scientist I usually like to get as objective a pocket  
2 as you could and then have them do the testing.

3 Q. If a manufacturer of a cigarette company did  
4 test its cigarettes for health effects, do you think  
5 it should disclose those tests to the public that  
6 it's going to give its cigarettes to?

7 A. I don't think it would make any difference.

8 Q. Wouldn't make any difference?

9 A. I'd rather have the third party testing, FDA or  
10 whoever is testing, for them to come up and do it. I  
11 may be totally wrong. In an ideal world, that's  
12 where we are. In an Alice-in-Wonderland world, I  
13 would like them to do the testing.

14 Q. Are you aware of a frank statement made by the  
15 cigarette industry in advertisements in January 1954?

16 MS. TYLER: Mr. Manning, I object to  
17 referring to a document you have not predesignated in  
18 this deposition. That's shown precisely in the  
19 order.

20 MR. MANNING: I can ask this witness what  
21 he is aware of and he is not aware of.

22 MS. TYLER: You are asking about a specific  
23 document.

24 MR. MANNING: I'm asking about a specific  
25 statement.

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1 Q. Are you aware, sir -- I'll complete my question  
2 before I was so rudely interrupted.

3 Are you aware of a frank statement the cigarette  
4 companies made in 1954?

5 A. Yes.

6 Q. And you are aware they made that statement in  
7 newspapers all over this country; correct?

8 MS. TYLER: Objection.

9 A. You are pushing me now, but in terms of where it  
10 ever appeared, it appeared. Whether it's been all  
11 over the country or not, I don't know.

12 Q. Where did you read it?

13 A. I don't know what newspaper. It's an historical  
14 document.

15 Q. Do you remember reading it at the time in '54?

16 A. No, I don't think I read it in '54. Sometime  
17 later, probably late '60s and '70s.

18 Q. Do you remember it saying something to the  
19 effect that we agree to accept an interest in  
20 people's health as a basic responsibility, paramount  
21 to every other consideration in our business, do you  
22 remember a statement to that effect?

23 MS. TYLER: I object to this line of  
24 questioning. You are now quoting from an exhibit  
25 which has not been marked, predesignated for this

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1 deposition. You are quoting from it, you are



2 referring to it and I object to this entire line of  
3 questioning.

4 MR. MANNING: Do whatever you like, and if  
5 you instruct him not to answer we will take it up  
6 with the court immediately.

7 MS. TYLER: I haven't instructed him, I am  
8 cautioning you --

9 MR. MANNING: State your objection as  
10 succinctly as possible, as stated in the court order,  
11 and let me move on. Otherwise state your objection,  
12 let's break, and I'll call the court. Let's do that  
13 and let me move on with the limited time I have here.

14 MS. TYLER: I object to your inappropriate  
15 reference to an exhibit which has not been  
16 predesignated. I move to strike this entire line of  
17 questioning.

18 BY MR. MANNING:

19 Q. Are you aware, sir, that --

20 As you told me, you are aware of the statement;  
21 correct?

22 A. Right.

23 Q. And did the statement, to your recollection, say  
24 something to the effect that the tobacco companies  
25 agreed to accept an interest in people's health as a

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1 basic responsibility paramount to every other  
2 consideration in their business, do you recall that  
3 statement?

4 MS. TYLER: Objection.

5 Q. Some words to that effect?

6 MS. TYLER: Objection.

7 A. Yeah.

8 Q. And have you ever seen the frank statement?

9 MS. TYLER: Objection.

10 Q. Sometime in the '60s?

11 A. In its original or just a newspaper?

12 Q. Either?

13 A. In a newspaper reprinted or, you know, it was a  
14 historical document. Where it was, that I can't tell  
15 you.

16 Q. Now you would understand that statement that you  
17 heard or read, you think it was sometime in the '60s;  
18 is that right?

19 A. I think that's the first time I heard it, yeah.

20 Q. And if someone said that, like tobacco  
21 companies, then you would expect them to live up to  
22 that statement; correct?

23 MS. TYLER: Objection.

24 A. You are exceeding, once again, my area of  
25 expertise as a professional. I'm not an ethicist, I

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1 don't know what people with corporations and how they  
2 are supposed to behave and when they say one thing  
3 and do another. You are way past me.

4 Q. Okay. So if people in corporations say one  
5 thing and do another, and they say one thing, let's  
6 say, to the public and promise it --

7 A. Uh-huh.

8 Q. -- and do another, you think that that may be  
9 acceptable from a court ethical standpoint?  
10 MS. TYLER: Objection, that misstates his  
11 testimony.  
12 A. No, that's not a statement of my testimony at  
13 all. That's a distortion, intentional distortion of  
14 my testimony.  
15 Q. Okay. If someone makes a statement to the  
16 public saying one thing and does another, they  
17 shouldn't do that, should they?  
18 A. I would not be shocked if they did that.  
19 Q. Why wouldn't you be shocked?  
20 A. Because I think it happens.  
21 Q. You think it happens in corporate America?  
22 A. Uh-huh.  
23 Q. And do you think it's right?  
24 A. I don't have any opinion on something so  
25 widespread as that type of an activity. I mean, it's

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1 a part of the American fiber, it seems, corporate  
2 America. But that's not my area of expertise so I  
3 stay away from it. I'm not interested in it, I avoid  
4 it, I have no opinion with regard to it.  
5 I have an expert opinion with regard to  
6 healthcare behavior problems and high risk behaviors  
7 and why people engage in those activities. This  
8 persistence of asking me questions way, way outside  
9 any of my expertise, response whatsoever, I'll try as  
10 best I can, but American people do what American

11 people do and corporations do what corporations do  
12 and I'm not responsible for them. I can only look  
13 and observe the patterns which exist.  
14 Q. You -- Did you tell me you think it's a part of  
15 the American fiber and fabric of America that  
16 corporations say one thing and do another? Is that  
17 what you said?  
18 A. I see that as a not-infrequent activity. I did  
19 not say what you said. I said what I just said.  
20 Q. You say you see that as a not infrequent  
21 activity?  
22 A. Uh-huh. I see the New York Times and Wall  
23 Street Journal and read it and I see it published in  
24 the Wall Street on a daily basis.  
25 Q. And when corporations or a corporation says

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1 something publicly about taking an interest, for  
2 example, in the American people's health and does the  
3 opposite, you would agree that that's wrong.  
4 MS. TYLER: Objection.  
5 A. I have no response whatsoever, sir. I say it  
6 reoccurs on a regular basis. It is a part of  
7 things. I'm not here to judge. I'm neither judge  
8 nor jury to the American public, nor am I judge or  
9 jury to what should go on in corporate America, nor  
10 do I want to assume what judges and attorneys should  
11 be arguing about in bringing it forward. That is not  
12 my business. No one has asked me those questions,

13 and I'm not here to formulate an opinion about them  
14 that I know.

15 Q. Are you aware nicotine levels in cigarettes can  
16 be controlled up and down?

17 MS. TYLER: Objection.

18 A. No, not at all.

19 Q. You are not aware of that at all?

20 A. I answered. No. I'm not in the area of  
21 expertise in toxicology, I have no knowledge of it  
22 whatsoever.

23 Q. I'm not saying toxicology.

24 Are you aware nicotine levels in cigarettes can  
25 be controlled up and down by the manufacturers of

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1 cigarettes, are you aware of that?

2 MS. TYLER: Objection.

3 A. No.

4 Q. Are you aware that if nicotine was not in  
5 cigarettes that people would not smoke and that  
6 cigarette companies recognize that?

7 MS. TYLER: Objection.

8 A. Am I aware of that?

9 Q. Yes, sir.

10 A. Never heard it.

11 Q. And so you are not aware that there are internal  
12 documents within tobacco companies' files that state  
13 that without nicotine they would essentially be out  
14 of business?

15 MS. TYLER: Objection.

16 Q. You have never heard of that?  
17 A. No.  
18 Q. Nope? Are you familiar with studies that report  
19 that half of all smokers who undergo surgery for lung  
20 cancer as a result of smoking have resumed smoking?  
21 MS. TYLER: Objection.  
22 Q. Are you aware of those studies?  
23 A. I'm not aware of the specific number you have  
24 quoted, but certainly there is a recidivism rate.  
25 Q. By people who have undergone the very severe

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1 surgery --  
2 A. Absolutely.  
3 Q. -- for lung cancer, there is a recidivism rate  
4 and you are not sure of the rate?  
5 A. You quoted it at 50 percent. I'm not here to  
6 dispute it. I don't have a study in front of me and  
7 you are not producing a study for me to examine, but  
8 certainly a recidivism rate.  
9 Q. Are you aware of a study done in 1990 that 84  
10 percent of those people who smoke a pack or more  
11 cigarettes per day have tried unsuccessfully to  
12 reduce the number of cigarettes they smoke or to  
13 quit?  
14 MS. TYLER: Objection.  
15 A. Could you repeat your question, please?  
16 Q. Sure. Are you familiar with a study done in  
17 approximately 1990 that 84.3 percent of people who  
18 smoke a pack or more of cigarettes a day have tried

19 successfully to either reduce the number of  
20 cigarettes they smoke or quit altogether?

21 MS. TYLER: Objection.

22 A. Yes.

23 Q. Are you aware that manufacturers have used  
24 demographics to develop advertising campaigns?

25 MS. TYLER: Objection.

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1 A. No.

2 Q. Not aware of that?

3 A. I don't think so. I mean -- Could you specify  
4 what you mean by "used demographics to develop  
5 advertising campaigns"?

6 Q. Are you aware of what I mean by that?

7 A. No.

8 Q. Are you aware that cigarette companies  
9 specifically have studied ages, class, race, other  
10 ways of differentiating people demographically and  
11 have studied people in every conceivable demographic  
12 way in order to develop campaigns of advertising?

13 MS. TYLER: Objection.

14 A. No, I wasn't.

15 Q. You weren't aware?

16 A. They did this themselves, did this research  
17 themselves, primary research?

18 Q. That's what I'm relating to you.

19 A. I've never seen the document, their internal  
20 documents. I know from the morning newspaper there  
21 are supposed to be millions of them. No, I certainly

22 didn't know they went -- that they did that.

23 Q. You didn't know that they did that?

24 A. No.

25 Q. What did you read in this morning's newspaper?

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1 A. This was the -- President Clinton's comment on  
2 the discussion. I'm embarrassed I don't know who he  
3 was presenting it to. He was discussing in some open  
4 context his -- I guess his first pass at trying to  
5 get people to move forward, keep moving, don't get  
6 stopped.

7 Q. Did you specifically read what the president  
8 said this morning on youth and smoking?

9 A. No, unfortunately I had the USA Today. Whatever  
10 that newspaper is, I think it's USA Today. I don't  
11 mean to disparage them; it wasn't very full coverage.

12 Q. So you don't recall anything you read in USA  
13 Today about what the president of the United States  
14 said yesterday about kids and cigarette companies and  
15 smoking?

16 MS. TYLER: Objection.

17 Q. Go ahead.

18 A. Yes.

19 Q. What did he say?

20 A. He wanted to encourage the consideration, from  
21 my perspective, just paraphrasing, encourage or  
22 develop political roots that would allow for the  
23 increase in cost of the tobacco item itself to be  
24 marketed in the future, and I think he quoted



25 somewhere around an increase of a dollar and a half,

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1 dollar sixty over the next ten years that would  
2 double the price of a package of cigarettes and that  
3 there needed to be further reconsideration of  
4 penalties or issues involved with what had already  
5 been set forth by the attorney general, so maybe  
6 there needed to be modifications of those, but the  
7 technicality of that begins to exceed me fairly  
8 quickly.

9 Q. Now sir, if in fact tobacco companies have used  
10 demographic campaigns that they have done as a result  
11 of their own primary research and studies --

12 A. Uh-huh.

13 Q. -- to encourage people to smoke, --

14 MS. TYLER: Is there a question?

15 A. Totally disconnect --

16 MR. MANNING: I haven't finished the  
17 question.

18 Q. If they have in fact used demographic campaigns  
19 in all of their diversity to encourage people to  
20 smoke, would that in any way impact your opinions?

21 MS. TYLER: Objection.

22 A. No. I think most companies market their  
23 products, that's what would be, I'm assuming, just be  
24 marketing, figuring out who to send the message to,  
25 where to send it. I'm not going to comment on their

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1 ethics, values, morals or --

2 Q. You are not going to comment on their ethics,  
3 values, morals?

4 A. I'm not an ethicist, I've already indicated to  
5 you. I don't know why they do things.

6 Q. Is it important for you to, when you are putting  
7 money in your pocket that you know is coming from  
8 tobacco companies, to understand the ethics, values  
9 and morals of what generated that money that comes to  
10 you?

11 MS. TYLER: Objection.

12 Q. Is that important to you as a human being?

13 A. I -- I'm having a disconnect here. I'm not sure  
14 I understand your question sufficiently to respond.

15 Q. Is it important to you as a human being to  
16 understand ethics, values, morals of a company that's  
17 putting money in your pocket?

18 A. I don't know how I would, I don't know how  
19 anyone would so --

20 Q. Have you ever read an annual report of a tobacco  
21 company?

22 A. No.

23 Q. And isn't one of the ways that you would check  
24 out a person's ethics, if we are just talking about  
25 people, let's say you are interviewing or hiring and

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1 one of the concerns that you had about this person

2 who you are going to hire as one of your colleagues,  
3 and somebody said, you know, when they come to  
4 interview we have some concerns about their ethics,  
5 values and morals, we have some concerns about that  
6 person, isn't one of the things is you would ask them  
7 directly about their ethics, values and morals,  
8 that's one of things you would do?  
9 A. I don't believe I'm allowed to. I think law,  
10 federal law prevents me from hiring -- asking any  
11 questions besides their specific duties that are  
12 being discharged in the office and how they are going  
13 to do that. I can't ask them anything. I might want  
14 to ask them but I'm not allowed to ask them just  
15 about anything that would impinge on their ethical  
16 values, whether they are in prison, use drugs, go out  
17 and do things. I'm not allowed to ask those things  
18 at all. I would be in deep trouble with personnel if  
19 I ask those questions. I'm not saying I don't want  
20 to ask that question, but I can't answer.  
21 Q. If you could --  
22 A. I can't.  
23 Q. But if you could --  
24 A. Society won't let me ask those questions. I  
25 don't live in this society.

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1 Q. Okay. So you believe you live in a society in  
2 which, with tobacco companies putting money in your  
3 pocket over the last three to five years, that you  
4 live in a society that prohibits you from asking

5 those companies about their ethics, morals and  
6 values; is that what you are telling me?

7 MS. TYLER: Objection.

8 A. I did not tell you that. I in no way phrased  
9 that, I in no way gave you that information in any  
10 way, shape or form. We were talking about  
11 individuals and me hiring a person in my office and  
12 it has nothing to do in relation to the Philip Morris  
13 company. We have now shifted the whole plane of  
14 conversation. Which way do we want to go?

15 Q. I'll tell you what.

16 A. Okay.

17 Q. You listen.

18 A. I'll listen.

19 Q. There is nothing to prevent you at all from  
20 telling this person right sitting next to you who is  
21 representing a tobacco company and representing you  
22 in this deposition on the next break that you want  
23 tonight to have an interview with someone from a  
24 tobacco company, whether it be by telephone or not,  
25 and talk to them about their ethics, values and

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1 morals. You could do that, couldn't you, sir?

2 MS. TYLER: Objection.

3 Q. You could.

4 A. Hypothetically I could.

5 Q. Absolutely.

6 A. Hypothetically.

7 Q. So far in the three to five years you have  
8 worked for these tobacco companies and put money in  
9 your pocket from them you have not asked one person  
10 from a tobacco company about their ethics, values or  
11 morals, have you?

12 A. No, sir. It would be absolutely useless.

13 Q. Nor, sir, have you asked one person from a  
14 tobacco company, nor, sir, have you on your own read  
15 an annual report of a tobacco company, have you?

16 A. No, sir.

17 Q. What are the most advertised cigarette brands,  
18 do you know?

19 A. No.

20 Q. No idea?

21 A. No.

22 Q. And no idea historically over a period of time,  
23 let's say in the last 20, 30 years, which brands of  
24 cigarettes have been most advertised. No idea.

25 A. No.

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1 Q. Do you know which brands of cigarettes kids  
2 smoke most?

3 A. I think I have a general idea, yes.

4 Q. Which?

5 A. Marlboros, Newports -- this is a guess; I don't  
6 have data in front of me -- Marlboros, Newports,  
7 Salems, Camels. That's my guess.

8 Q. Where did you read that?

9 A. I think there is -- there is research material

10 indicating the relationship because we have, from my  
11 perspective, what's called a spurious correlation  
12 which we arrive at.  
13 Q. "Spurious."  
14 A. Spurious, yes. Means false.  
15 Q. False. What -- Tell me about that. What do you  
16 mean, you have arrived -- somebody's arrived at a  
17 spurious or false correlation?  
18 A. No, an article, there is a research article that  
19 directly indicates this number, these are the most  
20 smoked cigarettes, dah, dah, dah, dah, by kids. And  
21 this relates to cigarette advertising, and for me in  
22 my research that would -- I would classify that as a  
23 spurious correlation. It does not any way dispute  
24 the fact the spurious correlation exists, it says the  
25 attraction to it is causally misunderstood.

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1 Q. Why is that?  
2 A. Why is it misunderstood?  
3 Q. Why is it not causally related?  
4 A. Because I don't believe that the temporal  
5 sequence has -- that there is not a joining of A and  
6 B, A being advertising, B being a behavior. I don't  
7 -- I don't see in the literature a causal phenomena  
8 there. In fact, I would see the exact  
9 counter-positive.  
10 Q. That there is no causal relationship in your  
11 view between advertising and smoking.

12 A. For whom?

13 MS. TYLER: Objection.

14 Q. For anybody.

15 A. Well I don't cover anybody. "Anybody" is a very  
16 large world out there, sir. I'm not an advertising  
17 expert.

18 Q. Okay. But you do cover kids?

19 A. Do cover adolescents, kids and adolescents.

20 MR. MANNING: Let me take a short  
21 two-minute break here.

22 (Recess taken from 11:10 to 11:15 a.m.)

23 Q. So, sir, you -- you have looked at correlation  
24 studies between money spent on advertising and kids,  
25 money spent on kids advertising or directed at kids

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1 and kids smoking, you have looked at correlation  
2 studies on that?

3 MS. TYLER: Objection.

4 A. Looked at a -- at least one article that  
5 purported that there was a -- a reasonable contra --  
6 concentration of younger persons, in the types of  
7 cigarettes that they would smoke, that there is a  
8 correlation purported between, I don't know if it's  
9 money or time or size of billboards or whatever it  
10 would be. It could be all sorts of ways you could  
11 measure advertising. There is that -- no, I -- I've  
12 read that, yes.

13 Q. And that's the correlation that you believe is  
14 spurious?

15 A. Yes.

16 Q. Has anyone ever told you, I mean like this

17 lawyer sitting next to you or Julia or Allen Purvis

18 or -- well, I'll just say from any source, not so

19 much the lawyers but any source, tobacco people,

20 documents, have you ever learned from any source that

21 tobacco companies, any of them, have many documents

22 that say that any successful brand over the last 30

23 years, really successful brand, that they within the

24 industry know that it's correlated, the success, to a

25 successful advertising campaign to kids; has anybody

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1 ever told you that?

2 MS. TYLER: Objection.

3 A. No.

4 Q. Are you aware of that?

5 A. No.

6 Q. Are you aware for the first time as I inform you

7 here now and make a statement, a declarative

8 statement that there are many documents within

9 numerous tobacco companies, Philip Morris, R.J.

10 Reynolds and others, B.A.T., et cetera, that state

11 very clearly that not only for their company but

12 within the entire industry that there is a strong

13 correlation in their minds, the tobacco companies',

14 that any successful brand of cigarette over the last

15 30 years has been one that has been heavily

16 advertised to kids? Are you aware of that?



17 MS. TYLER: Objection.

18 Q. Are you aware of that?

19 A. No.

20 Q. Did you just become aware of that for the first  
21 time when I asked this question, that that may  
22 possibly exist? You may not believe me, and I  
23 understand that, but --

24 A. Well there is the assumption once again that you  
25 say documents exist that you haven't shown me --

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1 Q. Right.

2 A. -- and you are not intending to show me, that I  
3 have to believe you or you want me to believe you and  
4 you are saying that they exist. And you have already  
5 answered the question, you said they exist, so what's  
6 the point of asking me?

7 Q. Is it the first time that you have ever been  
8 aware of this topic, when I just asked you that  
9 question?

10 MS. TYLER: Objection.

11 A. That they believe that -- I haven't ever seen  
12 any documents, so we are dealing in hypotheticals.

13 Q. So it's the first time you've become aware of  
14 this issue?

15 A. No, I can't become aware of a hypothetical. I  
16 can become aware of the hypothetical assumptions that  
17 somebody did something, but I can't become aware of a  
18 fact, and that seems to be switched.

19 Q. I'm not asking you to be aware of that. Please,

20 don't get me wrong, I'm not in any way, so the jury  
21 is real clear here, I'm not asking you to state that  
22 that's a fact; okay?

23 A. Uh-huh.

24 Q. I'm not asking you to do that. That's unfair,  
25 and I'm not asking you to do that.

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1 A. Sure.

2 Q. I wouldn't do that.

3 A. Okay.

4 Q. What I would ask is that this topic of the  
5 tobacco companies studying kids and stating clearly  
6 in internal documents that the really successful  
7 brands of cigarettes have in fact had a very strong  
8 correlation between money spent on advertising to  
9 kids and success, that that topic, that being present  
10 within internal tobacco company documents themselves,  
11 as we discussed, this is the first time that  
12 anybody's brought that to your attention --

13 MS. TYLER: Objection.

14 Q. -- is when I asked you about it?

15 A. You have asked me to make the assumption that  
16 that exists.

17 Q. Yes.

18 A. And as long as you make the assumption, then  
19 I'll say whatever assumption you put forward, I'll  
20 believe that you have an assumption, and if that's  
21 what you want me to believe then I'll say you have an

22 assumption. I don't have any opinion about it.  
23 Q. The question is -- The question is, the first  
24 time that's been brought to your attention is right  
25 now when I asked you the question about it, as a

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1 topic.

2 MS. TYLER: Objection.

3 A. In that level of detail you just provided me  
4 right this minute, yeah.

5 Q. Correct.

6 A. Yeah.

7 Q. Right?

8 A. As far as I recall, yeah.

9 Q. Yeah. Now do you think that it's possible that  
10 just one kid out there in the world, in America, has  
11 started smoking as a result of a Joe Camel ad?

12 A. I have no idea.

13 Q. Do you think it's possible that 10 kids may be  
14 out there in America and started smoking as a result  
15 of Joe Camel ads?

16 A. I have no idea.

17 Q. Do you think that it's possible that a thousand  
18 kids started smoking as a result of a Joe Camel ad?

19 A. I have no idea.

20 Q. And do you think it's possible maybe a hundred  
21 or two or three or four hundred thousand kids have  
22 started smoking as a result of the Joe Camel ad?

23 A. Absolutely not.

24 Q. Would you give the same answers if I asked you

25 the same questions about the Marlboro Man?

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- 1 A. The numbers and --
- 2 Q. Yes. I can repeat the question.
- 3 A. I don't know.
- 4 Q. You would say you have no idea?
- 5 A. I didn't say that. I said absolutely -- The
- 6 last one I said I would not believe you.
- 7 Q. Do you think it's possible that one kid in the
- 8 world has ever, in America, has ever started smoking
- 9 as a result of the Marlboro Man?
- 10 A. I have no idea.
- 11 Q. Do you think it's possible that 10 kids have
- 12 ever started smoking as a result of the Marlboro Man?
- 13 A. I have no idea.
- 14 Q. How about a thousand kids?
- 15 A. I have no idea.
- 16 Q. How about a hundred thousand kids?
- 17 A. I would not agree with you. No, I would think
- 18 that would not be the case.
- 19 Q. Now do you agree that advertising and marketing
- 20 is designed to increase the perceived value of
- 21 smoking?
- 22 A. What kind of advertising?
- 23 Q. Cigarette advertising in general.
- 24 A. I have no idea.
- 25 Q. No idea whether it's designed -- whether it's

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1 designed to increase the perceived --  
2 A. I'm not an expert in advertising; I have no idea  
3 why people advertise.  
4 Q. You have never worked in an advertising agency?  
5 A. No.  
6 Q. You have never had any contact with an  
7 advertising agency?  
8 A. Not that I can recall.  
9 Q. You have not had any contact with internal  
10 advertising departments within corporations of any  
11 type?  
12 A. That's not true, no.  
13 Q. What -- Tell me, what's your contact with  
14 internal advertising departments and corporations?  
15 A. General Motors, photographic. It's a long time  
16 ago. In the late '50s.  
17 Q. What did you do for them? What was the contact?  
18 A. I helped make animated movies, sat under the  
19 desk and arranged microphones.  
20 Q. Okay. And so you worked in the advertising  
21 department?  
22 A. Called a photographic department. What they did  
23 with them afterwards -- I assume they did something  
24 with them.  
25 Q. What other contact have you had with internal

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1 advertising departments and corporations?

2 A. None that I know of.

3 Q. So have you ever been involved in advertising in

4 any way, shape or form?

5 MS. TYLER: Objection.

6 A. Not that I recall.

7 Q. Have you ever been a consultant in any way about

8 what is false advertising?

9 A. You will have to let me think for a second. No,

10 I don't think so.

11 Q. Do you know the difference between expressly

12 false advertising and impliedly false advertising; do

13 you know the difference?

14 A. No.

15 Q. You have no idea how that is talked about or

16 distinguished by advertising professionals, for

17 example?

18 A. No.

19 Q. Have you ever heard statements by tobacco

20 companies that there is no causal relationship

21 between cigarette smoking and adverse health effects?

22 A. Could you repeat that, please?

23 Q. Have you ever heard statements by tobacco

24 companies that there is no causal relationship

25 between cigarette smoking and adverse health

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1 effects?

2 A. What did the frank statement say? I don't have

3 it in front of me. You quoted --

4 Q. What I paraphrased to you was the frank  
5 statement said we will take an interest in your  
6 health paramount to every other interest and we  
7 commit to do that, paraphrased?  
8 A. Is that sort of the same thing you are looking  
9 for here.  
10 Q. Well listen to the question. You decide. You  
11 are giving the answers. I'm not putting any answers  
12 in your mouth at all.  
13 A. No, no, not at all.  
14 Q. Have you heard statements by tobacco companies  
15 that there is no public statements that there is no  
16 causal relationship between cigarette smoking and  
17 adverse health effects?  
18 A. Right this minute I don't recall any, of having  
19 heard that, no.  
20 Q. So to your knowledge as an expert here and  
21 testifying, being ultimately paid by the tobacco  
22 industry, you have never in the course of your  
23 professional career or in the last five years become  
24 aware of a tobacco company, one or collectively,  
25 making a statement publicly that there is no causal

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1 relationship between cigarette smoking and adverse  
2 health?

3 MS. TYLER: Objection.

4 A. I don't think I would attend to something like  
5 that.

6 Q. What do you mean you wouldn't attend to

7 something like that?

8 A. Pay attention to it.

9 Q. Why is that?

10 A. As a scientist I look at the CDC data which we

11 previously already reviewed. I would have no reason

12 to supplant what the CDC is saying with what someone

13 else says. The epidemiologists, the externalized,

14 objective, third-party person would be somebody that

15 I'm looking at.

16 Q. Because in fact they -- the objective CDC third

17 party has unequivocally stated, as we previously

18 talked about, from an epidemiological standpoint

19 there is a causal relationship between --

20 A. No, there is an association. They don't specify

21 a causal relationship, an association between A

22 and B.

23 Q. Between cigarette smoking and adverse health

24 effects; correct?

25 A. Correct.

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1 Q. So if someone said, such as a tobacco company,

2 that there was no association between cigarette

3 smoking and adverse health effects, if they said

4 that, then in terms of the CDC data that you are

5 aware of that statement would be untrue?

6 MS. TYLER: Objection.

7 A. I wouldn't attend to it. I wouldn't attend to

8 it.



9 Q. Because it would be untrue; correct?  
10 A. I wouldn't pay any attention to it.  
11 Q. That's not the question. Listen to the  
12 question. I'm not asking --  
13 A. I don't know whether it's true, untrue or  
14 whatever. I listen to the CDC, I watch the CDC, the  
15 CDC I think in this matter is very effective and has  
16 a history and that's not something I would attend to  
17 by the corporation. I would dismiss it.  
18 Q. Why?  
19 A. Because I don't expect them to say one way or  
20 the other about their product. That's not something  
21 I get -- that's not a source, legitimate source of  
22 information.  
23 Q. Why is that? Why is a corporation about its own  
24 product not a legitimate source of information?  
25 A. I don't know how they would get the information

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1 except from the CDC. How would any corporation get  
2 information like that?  
3 Q. On its own product they would have to get it  
4 from the CDC in your mind?  
5 MS. TYLER: Objection.  
6 A. I would think so.  
7 Q. And if they had that information, let's say in  
8 fact prior --  
9 You are familiar with the surgeon general's  
10 report in 1964; right?  
11 A. If you present it to me I'll be happy to take a

12 look at it.

13 Q. You list it as one of the documents; correct?

14 A. Yes.

15 Q. You reviewed it?

16 A. Yes.

17 Q. I'm not going to go through it with you line by

18 line but it's something you have reviewed in the

19 course of arriving at the opinions that you intend to

20 attempt to express in a court of law; correct?

21 A. Yes.

22 Q. If in fact cigarette companies had lots of

23 scientific information that they intentionally did

24 not give to the CDC prior to 1964 about the

25 association between cancer and cigarette smoking,

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1 that would surprise you.

2 MS. TYLER: Objection.

3 Q. Correct?

4 A. That's not a question --

5 Q. That's a question.

6 A. Oh.

7 Q. That would surprise you?

8 A. No.

9 Q. Well, you would be surprised that the tobacco

10 companies even had detailed health information prior

11 to 1964.

12 A. Correct.

13 Q. But if they did, if they did, epidemiological

14 health information that in fact proved in their  
15 minds, the tobacco companies' minds, an association  
16 between smoking and cancer -- I'm asking you to  
17 assume they had that; okay? All right?  
18 A. I got you. Go ahead.  
19 Q. -- you would expect them to give that to the CDC  
20 if in fact they knew the CDC was studying the very  
21 same question, would you not?  
22 MS. TYLER: Objection.  
23 A. That's a multicomplex question. No, I wouldn't  
24 expect them to give it to them, no.  
25 Q. Okay. Have you read statements, public

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1 statements that cigarette companies have made  
2 publicly that cigarette smoking is not addictive?  
3 A. Have I read public statements?  
4 Q. By cigarette companies where they have stated  
5 publicly that cigarette smoking is not addictive.  
6 Have you seen that?  
7 A. I don't think so.  
8 Q. Never heard of that? Never heard of a cigarette  
9 company stating publicly that cigarettes are not  
10 addictive?  
11 MS. TYLER: Objection.  
12 Q. It's a topic you are not familiar with?  
13 MS. TYLER: Objection.  
14 A. I'm not an addictionologist and so, you know, I  
15 -- if it's a document, I don't -- falls so far away  
16 from my field of activity it wouldn't be something I

17 would attend to if somebody said that. I may have  
18 heard it, but I'm saying recall and recording that,  
19 that would have been -- no.

20 Q. Have you read Dr. Perry's expert report?

21 A. Dr. Perry is who?

22 Q. An expert in this case.

23 A. I read a document that was I believe produced,  
24 yes.

25 Q. That was her expert report.

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1 A. Yes.

2 Q. And when was that given to you?

3 A. Two -- Sometime after I was asked whether I  
4 would participate in this case.

5 Q. In Minnesota?

6 A. Right.

7 Q. Who was it given to you by?

8 A. Julia Tyler, I believe.

9 Q. Anybody --

10 A. I believe so.

11 Q. Anybody else give it to you besides Julia?

12 A. No. I've just got one copy.

13 Q. Of the report?

14 A. Of the report.

15 Q. And you read it?

16 A. Yes, sir.

17 Q. Do you have it with you?

18 A. No, I don't.

19 Q. Did you bring it with you on the airplane up

20 here?

21 A. No.

22 Q. It's not in your hotel room?

23 A. No.

24 Q. Did you bring anything with you when you came to

25 Minnesota?

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1 A. No.

2 Q. Not one piece of paper related to this case?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Do you have a file back home related to this

7 case?

8 A. No.

9 Q. Do you have a file on Mississippi, Florida,

10 Minnesota?

11 A. No.

12 Q. How do you keep your files related to the work

13 that you are doing for the tobacco industry, how do

14 you keep them?

15 A. Well they are all documentation of materials

16 that I use in my normal research, and if a question

17 comes up that says, well, what would be the

18 relationship of cigarette advertising to kids smoking

19 I'd say, okay, let's look at all the data that I

20 would have on cigarette advertising and kids smoking

21 or what I have as primary data sources and look at

22 that. Then I would perform -- you know, form a

23 professional opinion based on what's there and/or  
24 what I have known in my own work.  
25 Q. How do you keep that data? Do you keep it in

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1 hard copy, keep studies in file drawers, by topic?  
2 A. Stacks. No, just the whole thing.  
3 Q. Stacks?  
4 A. Well the only reason they are stacks is because  
5 if you put everything in one stack, it falls over.  
6 Q. Yeah.  
7 A. I mean that seriously.  
8 Q. So that's how you do your research is that you  
9 just gather stacks of stuff on a topic?

10 MS. TYLER: Objection.

11 Q. You keep it in a stack?

12 MS. TYLER: Objection.

13 A. Yes.

14 Q. And one of the topics that you have done  
15 research on is kids and smoking as a result of being  
16 retained by these lawyers.

17 MS. TYLER: Objection.

18 A. No. That's not what I said. That's not what I  
19 said, and that's a misstatement of what I did say.

20 Q. Where am I wrong?

21 A. I don't know what the intent is so --

22 Q. Where am I wrong?

23 A. I'm not going to collect it, per se, on here's a  
24 huge stack of stuff on cigarettes and kids smoking.  
25 There would be an area of high risk behavior patterns

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1 in relationship to kids, smoking would be an activity  
2 area in there, and I can take out of the stack those  
3 areas.

4 Q. When you drafted your report, did you do it  
5 yourself?

6 A. Yes.

7 Q. Completely and totally?

8 A. Not the front page. And then down in the back  
9 there is a listing of whatever you call it,  
10 proceedings or things that you do in court.

11 Q. Right.

12 A. And that was -- I telephoned that in, so I  
13 didn't write that.

14 Q. The report itself you drafted entirely?

15 A. Yes.

16 Q. Did you ever show it to anybody in draft form  
17 before it was filed?

18 A. No.

19 Q. Did you ever show it to Allen Purvis in draft  
20 form?

21 A. No.

22 Q. Ever show it to Julia in draft form?

23 A. No.

24 MR. GINDER: Could you speak up, counsel?

25 Q. Did you ever show it to any lawyer in draft

1 form?

2 A. I can't hear you, sir.

3 MR. GINDER: Excuse me, counsel. Could you

4 speak up a little bit?

5 Q. Did you ever show it to any lawyer in draft

6 form?

7 A. No.

8 Q. Did you draft it on a computer?

9 A. Yes.

10 Q. And did you change things? Did you draft it

11 once? How many drafts did it go through?

12 A. Wrote it and then rewrote it.

13 Q. How many times?

14 A. So probably twice.

15 Q. Just twice?

16 A. That's what I said.

17 Q. How many times had you rewrote the first

18 draft --

19 You have a draft of other reports from

20 Mississippi and Florida that I take it you were able

21 to start with when you started this report; is that

22 right?

23 A. I have, you know, other pieces, documents.

24 Q. Did you give a report in Florida or did you just

25 give a deposition?

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1 A. Give a deposition.



2 Q. Did you give a report?  
3 A. No.  
4 Q. How about Mississippi?  
5 A. No.  
6 Q. Just a deposition?  
7 A. Just a deposition.  
8 Q. So this is the first report you have issued.  
9 A. As far as I know.  
10 Q. Would you submit it to a peer-review body for  
11 publication?  
12 A. No.  
13 Q. Do you think that it would rise to the level of  
14 a piece of peer-review literature if you did submit  
15 it?  
16 A. It's like asking if I submitted this can for  
17 peer review. It has no relationship. This is a  
18 document written for a court proceeding. Nobody  
19 would want to publish anything like that. It would  
20 be silly. It has to hold all the accuracy -- I try  
21 to do the exact same thing, but I don't know of a  
22 peer-review journal that would want to sit down and  
23 read what's going on in Minnesota.  
24 Q. Do you believe that this publication that you  
25 have given to us here in Minnesota would survive a

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1 peer-review process, do you believe it would?  
2 A. I don't -- I didn't hand in or give any  
3 publication.  
4 Q. You handed in a report.

5 A. That's not a publication. It's not a peer  
6 review --  
7 Q. I said do you believe this report would survive  
8 peer review.  
9 A. It has no -- There is a total disconnect. What  
10 would be a journal that I would send it to that would  
11 want to see a document at my level of expertise?  
12 Q. Have you sat on peer-review committees yourself?  
13 A. Sure.  
14 Q. Have you rejected articles that have come before  
15 you for peer review?  
16 A. Sure.  
17 Q. Have you on more than one occasion told people  
18 who are doing peer-review articles, when they come in  
19 front of you, go back and get more, scratch the  
20 surface here more, this is good, this is good but  
21 these four areas need further development?  
22 MS. TYLER: Objection.  
23 Q. Have you done that?  
24 A. I try not to.  
25 Q. Why not?

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1 A. I don't think it's appropriate.  
2 Q. Why isn't it appropriate?  
3 A. I'm not -- I don't tell the other researcher  
4 what to write or what to do.  
5 Q. Do you at times --  
6 But you do respect the peer-review process,

7 don't you?

8 A. Absolutely.

9 Q. It is one that should be rigorous scrutiny,  
10 would it not?

11 A. Absolutely.

12 Q. One should rigorously scrutinize the data in the  
13 piece that's being put to you; correct?

14 A. Absolutely.

15 Q. One should rigorously scrutinize the hypothesis  
16 upon which the research is based; correct?

17 A. Absolutely.

18 Q. One should scrutinize any assumption within the  
19 piece; correct?

20 A. Sure.

21 Q. One should make sure there are no leaps of faith  
22 in logic; correct?

23 A. Quite the contrary. You just have to find  
24 them. I guess you may not have much of an  
25 understanding of science. That exhibits some lack

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1 thereof.

2 Q. Thank you, thank you.

3 A. Leaps of science is where the guy is making his  
4 contribution, somewhere in there, and so you just  
5 have to identify that.

6 Q. That's right. Sure. But you would want to make  
7 sure that within the hypothesis the person has set  
8 up, in getting from the hypothesis with the data to  
9 the conclusion that there are -- that there is sound

10 logical thinking.

11 A. Sure hope so, yeah.

12 Q. Yeah.

13 A. Otherwise the leap of faith falls apart.

14 Q. Pardon me?

15 A. Otherwise the leap of faith falls apart.

16 Q. You bet. In that process of setting up the  
17 hypothesis and using data in doing research, if that  
18 person had missed or skipped areas that should be  
19 researched, part of the peer-review process is to  
20 point that out; correct?

21 A. Someone might do it.

22 Q. You may not.

23 A. Probably not.

24 Q. Probably wouldn't?

25 A. Would not.

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1 Q. But it would be a legitimate part of the  
2 peer-review process; correct?

3 A. Sure.

4 Q. And it would be surely legitimate for someone to  
5 question and say have you looked at enough angles to  
6 support the hypothesis; correct?

7 A. That's getting a little pushy, but you could do  
8 that.

9 Q. You could do that?

10 A. You could.

11 Q. Likewise, someone could read your report and  
12 legitimately say, Dr. Morse, if I'm on your

13 peer-review committee, with all due respect -- and  
14 someone could say this in relationship to this report  
15 -- it would appear as if you have taken somewhat of  
16 an ostrich report to this research because you have  
17 not consulted with the tobacco companies at all or  
18 looked at any of the tobacco documents. That could  
19 be a legitimate criticism of your report, couldn't  
20 it?

21 MS. TYLER: Objection.

22 A. I wouldn't think so. I wouldn't accept it as  
23 such.

24 Q. You wouldn't accept it as such?

25 A. No.

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1 Q. Now you saw that Dr. Perry did in fact review  
2 tobacco company documents in great detail; correct?

3 A. I believe that's the case, yes.

4 Q. You saw that she in fact was a key person in the  
5 1994 CDC report or surgeon general's report on youth  
6 and smoking.

7 A. Uh-huh.

8 Q. Correct?

9 A. Uh-huh.

10 MS. TYLER: Objection.

11 Q. And you saw that that report in 1994, done by  
12 the surgeon general, noted that one of the very key  
13 elements of the analysis of the issue of youth and  
14 smoking should be the tobacco company documents, you  
15 saw that?

16 MS. TYLER: Objection.

17 A. I think we are getting into enough detail if you

18 could show me the document I think it would ease my

19 relationship. You are asking for my recall of a very

20 specific item.

21 Q. That's fine. If you don't recall, that's what I

22 want to know.

23 A. Right this second I don't recall. It's

24 certainly within the area, yes, but --

25 Q. I just want to be clear. As to your

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1 recollection of the 1994 surgeon general's report on

2 youth and smoking, and you have it cited in your

3 report; correct?

4 A. Just give me the exact wording that you want me

5 to --

6 Q. I don't want the exact wording. I'm asking you

7 for a concept -- okay? -- to understand what your

8 perception was of a concept, report or concepts.

9 A. Sir, you are asking me to do this without the

10 boundaries, and I do object without the boundaries of

11 being able to read the document and putting it in

12 front of me.

13 I don't know why you persist in that. You are

14 asking if I can recall every word or every complex

15 that deals with an extremely complex behavioral

16 issue. I don't mean to lecture to you. If we could

17 just look at it we could move along quickly as to

18 items, issues and/or concerns.

19 Q. At an appropriate time -- Don't give me a  
20 speech. Just listen to my question.

21 MS. TYLER: Objection.

22 MR. MANNING: He is not answering the  
23 question.

24 Q. Just answer my question. If you want to give a  
25 speech --

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1 A. I don't want to --

2 (Interruption by the reporter.)

3 Q. Now do you, as you sit here, recollect that the  
4 1994 surgeon general's report on youth and smoking  
5 noted that, one, they had reviewed just some, just  
6 some documents of the tobacco industry, do you recall  
7 that, on the youth-and-smoking issue?

8 A. I believe that's the case.

9 Q. And do you recall that they noted, more than  
10 just a footnote but stated that not only had they  
11 reviewed some but they had reviewed enough to know  
12 that an important source of information to be  
13 scientific and objective would be to review all or a  
14 great deal more of the tobacco company documents? Do  
15 you recall that?

16 MS. TYLER: Objection.

17 Q. As you sit here is the question.

18 A. I believe that would be a sound recollection.

19 Q. And so even though you had read that report and  
20 you recollect that that's what the report stated, --

21 A. Uh-huh.

22 Q. -- you at least as a scientist, before you issue  
23 this report here in Minnesota --

24 A. Uh-huh.

25 Q. -- did not ask, as we have so clearly explained,

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1 asked to see the tobacco company documents, did you?

2 MS. TYLER: Objection. I want to clarify  
3 for the record, you stated twice Professor Morse  
4 relied on the 1994 surgeon general's and 1964 surgeon  
5 general's report and neither of those documents are  
6 listed on his principal list of references.

7 MR. MANNING: So noted.

8 Q. Do you understand the question?

9 A. No. I'm sorry. If you could --

10 MR. MANNING: I'll ask David to reread the  
11 question.

12 THE WITNESS: Just the last part of it.

13 MS. TYLER: Please read the whole  
14 question.

15 THE WITNESS: Excuse me.

16 (Record read.)

17 A. Related to adolescents.

18 Q. And smoking.

19 A. What documents? Which documents?

20 Q. You did not ask to see those documents, did  
21 you?

22 MS. TYLER: Objection.



23 A. Can I just know which documents you are  
24 referring to?  
25 Q. The documents that you had acknowledged were

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1 referenced in the CDC during the surgeon general's  
2 '94 report.  
3 A. No, I didn't request to see them.  
4 Q. Likewise, when you read Dr. Perry's report,  
5 which you told me you did; right?  
6 A. Uh-huh, uh-huh.  
7 Q. When was that?  
8 A. Somewhere between late spring and today.  
9 Q. You saw that her report referenced many tobacco  
10 company documents --  
11 A. Uh-huh.  
12 Q. -- on children and youth?  
13 A. Uh-huh.  
14 Q. Correct?  
15 A. Uh-huh.  
16 Q. You saw --  
17 A. I believe so.  
18 Q. I'm sorry?  
19 A. I believe so.  
20 Q. And you knew she was testifying in the precise  
21 area you are testifying on?  
22 MS. TYLER: Objection.  
23 Q. Correct?  
24 MS. TYLER: Objection?  
25 A. I didn't know what she was going to testify on.

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1 Q. When you read her report you didn't know what  
2 she was going to testify about, is that what you are  
3 saying?

4 A. I'm not an attorney; I wouldn't know what she is  
5 going to testify on.

6 Q. So when you read her 15-page report you did not  
7 know that the report indicated that this is what she  
8 intended to testify about, and it so stated in the  
9 beginning of the report what her credentials were and  
10 what she intended to testify about, you didn't read  
11 that?

12 MS. TYLER: Objection.

13 A. I'm sorry. I've read the documents. I'm  
14 unfamiliar with this. This, as you have stated, is  
15 the first one I've written. I don't know how I jump  
16 -- I know from what I'm going to -- would testify to  
17 but I --

18 Q. Your report?

19 A. If that's what it says, that's fine.

20 Q. Your report in fact is a statement of what you  
21 intend to testify about; correct?

22 A. That's what I read she's going to testify about.

23 Q. And when you read it, you understood that she  
24 was going to testify differently than you.

25 MS. TYLER: Objection.

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1 Q. Correct?

2 A. Not necessarily, no.

3 Q. You didn't understand that when you read her  
4 report, that you and her differed?

5 A. You asked two different questions, then.

6 Q. Did you understand when you read her report that  
7 you and her differed?

8 A. Yes.

9 Q. And you understood that she had read numerous  
10 tobacco company documents?

11 MS. TYLER: Objection.

12 Q. In order to write her report; correct?

13 MS. TYLER: Objection.

14 A. Where we would differ wouldn't have anything to  
15 do --

16 Q. I'm not asking where you would differ. This is  
17 a separate question. That's the next question.

18 A. Okay.

19 Q. The question is: You saw in her report that she  
20 had read many tobacco company documents and cited  
21 them?

22 A. Uh-huh.

23 Q. Correct?

24 A. Uh-huh.

25 Q. And you saw that after you read the 1994 surgeon

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1 general's report that, as we previously acknowledged,

2 stated that it would be helpful to read the tobacco  
3 company documents on the youth-and-smoking issue;  
4 correct?  
5 A. Uh-huh, yes.  
6 Q. And so from two sources, after you read in two  
7 sources, the 1994 surgeon general's report on youth  
8 and smoking, that they were interested to read  
9 tobacco company documents, would find it helpful on  
10 the issue, and after you read Dr. Perry's report who  
11 differed with you, at a minimum, on certain issues  
12 and she had read tobacco company documents, you still  
13 never asked to look at one tobacco company document;  
14 correct?  
15 A. Correct.  
16 Q. You have read the FDA focus groups and reports  
17 on the 17 FDA focus groups; right?  
18 A. Which focus groups of the FDA, sir?  
19 Q. Do you recollect that there were 17 focus groups  
20 that the FDA did that you read and talked about?  
21 A. Could you be specific as to the date and time of  
22 the focus groups you are referring to?  
23 Q. I can't, and if you can't answer without the  
24 date and time, I'll withdraw the question. If that's  
25 a problem, I'll just withdraw it. That's no

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1 problem. I don't want to be too vague.  
2 A. You know, they did some with relation to kids,  
3 and those I reviewed.  
4 Q. Right.

5 A. I would say they were done in 1995. Are those  
6 the ones you are referring to?  
7 Q. Yes, it is.  
8 A. I've read them.  
9 Q. Now you would not define -- you would not say  
10 that children, when they start smoking, can become  
11 addictive to smoking; right?  
12 A. I have no idea. I'm not a doctor, I'm not an  
13 addictionologist and I would have no basis upon which  
14 to professionally provide you an opinion.  
15 Q. So as a person with your background as we know  
16 from your CV and what you describe in terms of a  
17 Ph.D. and behavioral -- behavioral what?  
18 A. High risk behaviors.  
19 Q. -- high risk behaviors, you cannot offer any  
20 insights that if a child starts smoking at 12, 13 or  
21 14, you cannot agree or disagree that that child may  
22 in fact become addicted?  
23 MS. TYLER: Objection.  
24 Q. Correct?  
25 A. If you please define the word "addiction."

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1 Q. You just can't do it; correct?  
2 MS. TYLER: Objection.  
3 A. I don't know the word you are asking me. When  
4 you asked the word "addiction," what do you mean by  
5 it, please? And then I will answer your question.  
6 Q. Well isn't -- isn't -- haven't you stated that

7 you would not describe children's behavior and smoke  
8 as addiction but you would describe it as a pattern  
9 of use of cigarettes? Haven't you stated that  
10 before?

11 A. That would be a fair summary.

12 Q. Yeah. And you said that you summarize it that  
13 way as a pattern of use of cigarettes because you're  
14 not an addictionist?

15 A. Correct.

16 Q. Now are you familiar with studies that talk  
17 about kids starting smoking when they are 13, 14, 15  
18 and a year or two later really want to quit but  
19 can't, are you familiar with those studies?

20 MS. TYLER: Objection.

21 A. There have been studies of that -- to that  
22 effect, yes.

23 Q. And studies -- there are studies that say there  
24 are kids that start smoking in varying degrees, 13,  
25 14, 15 and in fact smoke -- when they start, think

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1 they will be able to quit, and then a year or two or  
2 three later when they try to quit they can't. You've  
3 seen those studies.

4 MS. TYLER: Objection.

5 Q. Correct?

6 A. That's a misstatement of the finding of the  
7 studies but --

8 Q. What's the finding of the studies as you  
9 recollect?

10 A. That some children cannot stop and that most  
11 children do stop.  
12 Q. Okay.  
13 A. Most children, the large majority of children  
14 stop.  
15 Q. That's your view?  
16 A. No, that's what the data says.  
17 Q. So what's, in your view, the data say about the  
18 percentage of kids that smoke for two years, not kids  
19 who start -- who smoke one cigarette or two  
20 cigarettes or a pack. I'm talking about kids who  
21 smoke for two years, what does the data say about  
22 whether that kids -- those kids, on a percentage  
23 basis, can stop?  
24 MS. TYLER: Objection.  
25 A. Your question is inappropriately phrased to be

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1 able to address the data, so I can't answer your  
2 question.  
3 Q. Why is that? How is the data constructed such  
4 that that question is inappropriate?  
5 A. Are we talking ever smoked once? You said smoke  
6 for two years. Has ever smoked? Smoked 100  
7 cigarettes during that period of time? Smoked once a  
8 day? Multiple days?  
9 Q. How do the studies define it, sir, that you are  
10 aware of? You are aware of studies on this topic and  
11 you are the expert.

12 A. They study on a variety -- whole variety of  
13 ways.  
14 Q. A whole variety of ways?  
15 A. So you have to focus on something.  
16 Q. What categories are you aware that they have  
17 studied?  
18 A. The smoker who is smoking a pack a day is a very  
19 popular group to focus on.  
20 Q. So the smoker, the kid that smokes from 14 to  
21 16, of those 100 kids that smoke a pack a day from 14  
22 to 16, what do the studies say about them being able  
23 to quit after two years, that behavior?  
24 MS. TYLER: Objection.  
25 A. They would -- They would be in the difficult

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1 area to stop the behavior. If they had done it for  
2 two years, they would be in a difficult area.  
3 Q. And what percentage would be able to quit versus  
4 what wouldn't be able to quit?  
5 A. For how long?  
6 Q. Two years.  
7 A. No, no, how long have they now quit for? That's  
8 very important.  
9 Q. You define it.  
10 A. I can't define it, sir. That's your question.  
11 Q. Quit forever. Quit forever, quit.  
12 A. Forever? At that age group I think we will find  
13 they would be a very small percentage.  
14 Q. Who could or would --  
15 A. Have, not could or would. This is not



16 hypotheticals. This is research data. We follow  
17 them longitudinally and we would find very few of  
18 them have stopped.  
19 Q. If we back that down to a year, kids smoked a  
20 pack of cigarettes for a year, age 14 to 15, is the  
21 data the same, very few?  
22 A. You have changed the question again. You are  
23 now saying a pack of cigarettes a year. That's not  
24 very many exposures to cigarettes during a year.  
25 Q. Pack of cigarettes a day for a year.

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1 A. That's a different question.  
2 Q. Thank you for the correction. Pack of  
3 cigarettes a day for a year. The prior discussion  
4 was for two years, now we are back to a pack a day  
5 for a year. Very few of those kids would be able to  
6 quit as well?  
7 A. It would be more kids than the two years but it  
8 would still be a, you know -- you'd have attempts.  
9 Still wouldn't have a lot of success now if you are  
10 now smoking a pack a day.  
11 Q. You do understand that in the same studies that  
12 kids in these age groups from 13 to 16 feel  
13 invulnerable. You have seen that referenced; --  
14 MS. TYLER: Objection.  
15 Q. -- correct?  
16 A. Yes.  
17 Q. And feel that they can in fact quit, that they

18 will never get addicted; correct?

19 MS. TYLER: Objection.

20 Q. Kids say that?

21 A. Yes, they say that.

22 Q. And they then also become disappointed with  
23 themselves when, 17 or 18 they try to quit and  
24 don't.

25 MS. TYLER: Objection.

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1 Q. They reflect internal disappointment in  
2 themselves; correct?

3 A. I -- I wouldn't be able to agree with you about  
4 that.

5 Q. You wouldn't?

6 A. No.

7 Q. What can you say about that?

8 A. Oh, I don't know whether they are internally  
9 disappointed about themselves.

10 Q. Do you believe that cigarette smoking can be  
11 harmful to the health of a youth or adolescent?

12 A. I'm not an M.D. so I can only rely on the CDC's  
13 material.

14 Q. What do they say, do you know?

15 A. I don't know if they, per se, can collect data  
16 on the harmfulness -- not true. They have increased  
17 sputum, mucous, discharge, colds, influenza, so it  
18 certainly affects them medically. Harmful, that's  
19 another story. But at least medically, they are  
20 rather young.

21 Q. Medical consequences that require going to the  
22 doctor possibly, in some cases yes, some cases no;  
23 right?  
24 A. I wouldn't think so.  
25 Q. You wouldn't think so?

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1 A. No.  
2 Q. Do you think there is any other things besides  
3 coughing and phlegm?  
4 A. That what?  
5 Q. That kids experience from smoking by way of  
6 health consequences.  
7 A. Getting high.  
8 Q. High blood pressure can be in there for kids?  
9 A. Never saw that.  
10 (Interruption by the reporter.)  
11 Q. Anything else besides coughing and phlegm that  
12 you can recall?  
13 A. Stuffy nose, sinusitis, I think they record  
14 that, a series of those respiratorial issues,  
15 compromise. I don't recall specifically the depth.  
16 Q. Now you believe that advertising in all  
17 marketing activities -- just want to make sure we  
18 know what we are talking about -- to their fullest  
19 extent, advertising and all marketing activities to  
20 their fullest extent have no impact on youth starting  
21 cigarette smoking; correct?  
22 A. No.  
23 MS. TYLER: Objection.

24 A. Not to my knowledge.

25 Q. And that's your opinion, you believe that

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1 strongly?

2 A. Yes.

3 Q. And that's based on the research; correct?

4 A. Yes.

5 Q. And when we say "advertising and all marketing

6 activities," what do you mean by "all marketing

7 activities"?

8 A. Allow anything that anyone would want to

9 conclude with regard to marketing, if it was

10 anything.

11 Q. Any amount of promotional activities? Any type

12 of handouts, free cigarettes, handouts of free

13 lighters, commercial displays, counter displays?

14 A. We have a problem. If they hand out a cigarette

15 then the CDC is going to count it as ever smoked, so

16 if they hand them a cigarette you are asking a

17 question that now has no answer because once they

18 have given them a cigarette, if they happen to smoke

19 it rather than give it away or sell it, then we are

20 going to have a smoker. But that doesn't produce a

21 smoker, per se, it produces someone that has one

22 cigarette once in a lifetime. I don't think that's a

23 smoker.

24 Q. If they gave them a pack then they might smoke a

25 pack; right?

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- 1 A. I doubt it.
- 2 Q. You doubt it?
- 3 A. I doubt it.
- 4 Q. If they gave them a carton, they might smoke a
- 5 carton?
- 6 A. I doubt it.
- 7 Q. You doubt it. But at least you are aware, are
- 8 you not, that a promotional activity of the tobacco
- 9 industry is to hand out free cigarettes on beaches
- 10 and streets to kids. You are aware of that?
- 11 MS. TYLER: Objection.
- 12 A. No, I'm not.
- 13 Q. You are not aware of that?
- 14 A. I've never seen it.
- 15 Q. And you have never heard of it?
- 16 A. What's the time frame?
- 17 Q. Last 30 years.
- 18 A. That's a big time frame.
- 19 Q. Last hundred years.
- 20 A. That's even a bigger time frame, a hundred years
- 21 ago. I don't know them ever handing out cigarettes
- 22 to kids. I have never heard of that.
- 23 Q. Never heard of it?
- 24 A. No, no.
- 25 Q. If they did do that it would be contrary to

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1 their own codes, wouldn't it?

2 MS. TYLER: Objection.

3 A. I don't know what their codes are.

4 Q. Have you looked at the cigarette advertising  
5 code?

6 A. No.

7 Q. You have never in your life in the last five  
8 years looked at the cigarette advertising code?

9 A. Absolutely not.

10 Q. So none of these lawyers in all these meetings  
11 that you have been in and all these contacts that you  
12 have had and these phone conversations, nobody has  
13 ever faxed to you the 1964 cigarette advertising  
14 code?

15 MS. TYLER: Objection.

16 Q. Is that right?

17 A. Correct.

18 Q. Have you ever heard of it?

19 A. No.

20 Q. Never heard that the cigarette companies all  
21 collectively voluntarily entered into a cigarette  
22 advertising code and continued to emphasize that they  
23 would abide by it. Ever heard that?

24 MS. TYLER: Objection.

25 A. I've already answered your question, sir.

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1 (Interruption by the reporter.)

2 Q. And so you can't make any comparison if you were

3 to go in and look at documents, for example, and  
4 discover that tobacco companies were advertising to  
5 youth or doing promotional activities to youth, you  
6 couldn't even make a determination as to whether it  
7 violated their own code because you have never seen  
8 it.

9 A. Don't have any professional standing upon which  
10 to do it. No one would ask me to do it.

11 Q. What other, when we talk about "all marketing  
12 activities," we are talking about, you know --

13 Your opinion is that all advertising and all  
14 marketing activities have no impact on kids starting  
15 smoking; correct?

16 A. Correct.

17 Q. And I want to make sure we know what all  
18 marketing activities are so we are talking about the  
19 same thing.

20 A. Okay.

21 Q. And it doesn't include handouts in your view. I  
22 mean, to be fair to you, we don't want to include  
23 handing out cigarettes as an all-marketing activity  
24 because clearly they might try one.

25 A. Uh-huh.

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1 Q. And that would then --

2 A. Upset your numbers, not mine.

3 Q. Well does it include handing out cigarettes or  
4 not, all marketing activities?

5 A. I've never worked -- In the work I've done in

6 reports by adolescents they never report that so  
7 wherever it happens, I've never seen it.

8 Q. Now handing out lighters with cigarettes as a  
9 marketing activity, that doesn't help kids start  
10 smoking in your view?

11 A. They do not report that. There is research that  
12 says they do not report that.

13 Q. Kids don't.

14 A. Kids don't.

15 Q. Are you aware of specific research in which  
16 there had been specific questions asked of kids about  
17 whether or not lighters given to them by cigarette  
18 companies have assisted them in both starting and  
19 maintaining their smoking habit? Are you aware of  
20 specific studies to that effect?

21 MS. TYLER: Objection.

22 A. Cigarette lighters. No, I don't recall that  
23 they have ever said cigarette lighters had any  
24 effect.

25 Q. Are you aware of specific studies that have

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1 asked that question?

2 A. I said the studies, I don't recall that anyone  
3 said that cigarette lighters had any effect.

4 Q. Not a question, not my question.

5 What you're saying, I'm asking, has any study  
6 been designed to look for that, the effect of  
7 lighters designed to, in your view?



8 A. None. Not that I know of.

9 Q. In fact, the types of studies you are referring  
10 to are questions that are put to -- questions put to  
11 kids about why they start smoking, general, open-end  
12 questions, ended questions, and they answer those  
13 questions; correct?

14 MS. TYLER: Objection.

15 Q. Right?

16 A. They are not always open-ended.

17 Q. Sometimes they are given a list of alternatives  
18 of things that impacted them, from peers to parents  
19 and even advertising?

20 A. The full spectrum.

21 Q. But in the studies that you and I are talking  
22 about we have never seen listed lighters on  
23 cigarettes. We have seen just the general category  
24 of advertising; correct? That's what you have said.

25 MS. TYLER: Objection, objection.

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1 A. Best of my recollection I think that would be  
2 the case. I mean, I haven't seen that.

3 Q. And you have not seen, for example, studies that  
4 look at the effect of handing out cigarettes on  
5 beaches or street corners or any other place on  
6 impact of starters, where it specifically studied  
7 that, have you?

8 MS. TYLER: Objection.

9 A. Not that I know of. I've never seen it in any  
10 peer-review journal or research that would hold the

11 standards of science, no.

12 Q. Are you aware of what in 1995 the cigarette

13 industry spent on advertising and marketing?

14 A. Don't have the slightest idea.

15 Q. Slightest idea. You have not seen in the CDC

16 report -- I'm sorry, I misquoted, but you did not see

17 in the surgeon general's report that \$4 billion in

18 1995 was spent, and in 1994, on the advertising and

19 marketing of cigarettes?

20 MS. TYLER: Objection.

21 A. As you refresh my memory, I would think that's a

22 number I believe the CDC is quoted on.

23 Q. Did you see the breakdown that a billion of that

24 4 was spent on advertising and 3 billion was spent on

25 promotions?

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1 A. I -- To be -- I -- In reading it, that would be

2 a breakdown. I'm not sure what it would mean so --

3 Q. You have not evaluated what \$3 billion on an

4 annual basis on promotions by an industry could be

5 spent on, have you?

6 A. What it could be spent on?

7 Q. Yes, sir.

8 A. Oh, no.

9 Q. Could you please tell this jury what you know of

10 today, in your mind, as what the possibilities are of

11 \$3 billion by an industry, on an annual basis, being

12 spent on promotions, not advertising but promotions?

13 What would those promotions be that you could spend  
14 \$3 billion on, to your knowledge?

15 MS. TYLER: Objection.

16 A. What the -- What they could spend it on?

17 Q. Yeah.

18 A. Sports events.

19 Q. Sports events. What else?

20 A. Probably handouts of some sort.

21 Q. Handouts. What else?

22 A. Probably would be about it. I presume that  
23 would take \$3 billion.

24 Q. What do you mean by "handouts"?

25 A. A hat or a T-shirt. They have like those things

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1 you put in cups, insulators.

2 Q. What else?

3 A. What else. Those are the sort of things I've  
4 seen.

5 Q. And you are not aware -- I'm sorry?

6 A. Those are the sorts of things I've seen.

7 Q. And you are not aware of any --

8 And those are all the things that you can recall  
9 or remember?

10 A. Right this minute that seems like quite a few  
11 things.

12 Q. And you are not aware of any studies that  
13 specifically study impact of these types of  
14 promotions that you've identified, specific studies,  
15 on kids starting to smoke?

16 A. In no peer-review journals of any form, normal,  
17 standard journals, do I remember the strength of  
18 anything that would be acceptable data. I don't  
19 think so. Not that I'm recalling right now. It's  
20 getting a little late towards lunch, but -- I don't  
21 mean to be misfiring, but I'm trying to be truthful.  
22 Q. And so -- And so if the cigarette industry  
23 spends \$3 billion on promotions and there are no  
24 peer-review articles that studied that precisely but  
25 that there are many documents within the possession

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1 of tobacco companies, as well as individuals in the  
2 tobacco companies who are involved in this \$3 billion  
3 promotional effort, --

4 A. Uh-huh.

5 Q. -- you at least have not undertaken to review  
6 those documents or talked to those individuals;  
7 correct?

8 MS. TYLER: Objection.

9 A. Absolutely not.

10 Q. Do you believe, sir, that cigarette companies  
11 actively pursue, a belief, but do you know, do you  
12 know whether cigarette companies actively pursue new  
13 smokers in an attempt to continue their market share  
14 or gain market share?

15 A. Please define --

16 MS. TYLER: Objection.

17 A. -- the term "actively pursue." I don't know

18 what you mean.  
19 Q. In any way, shape or form. They do some  
20 activity to attempt to pursue.  
21 A. Pursue?  
22 Q. New smokers.  
23 A. What category?  
24 Q. Kids or adults, just a new smoker. That they  
25 are interested in getting a person, kid or adult, in

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1 the world to become a smoker. Do cigarette companies  
2 attempt to do that?  
3 MS. TYLER: Objection.  
4 A. I don't know.  
5 Q. No idea?  
6 A. I've never seen it so I don't know.  
7 Q. And you've never asked them whether they do  
8 that?  
9 A. I wouldn't ask them. Not that I don't ask  
10 them. I would not. I've repeatedly stated to you I  
11 would not ask them.  
12 Q. I understand you would not and you haven't.  
13 A. That's correct, on the record, I would not, have  
14 not.  
15 Q. And have you seen the cigarette industry, any  
16 cigarette company or anyone in the industry on their  
17 behalf make a statement that they do not in any way,  
18 shape or form want or go after new smokers, kids or  
19 adults?  
20 A. I don't know. I don't remember.

21 Q. You would agree with me that the average age  
22 that a person first experiments with cigarettes is  
23 ages 9 to 11?  
24 A. Nine to 11? No. They may have had their first  
25 cigarette, but are they now smoking? Now we get back

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1 to the details of what they are doing.  
2 Q. Let me re-ask the question.  
3 A. Okay.  
4 Q. Do you agree that the average age a person first  
5 experiments with cigarettes is ages 9 to 11?  
6 A. The majority of the kids I think has their --  
7 would have their exposure. That would be the modal  
8 category, I think, would be that younger age, yeah, 9  
9 to 11-ish, gets small in there.  
10 Q. The first experiments?  
11 A. Yes, the modal case.  
12 Q. You also agree that kids most frequently start  
13 somewhere after 13 and before 18?  
14 MS. TYLER: Objection.  
15 Q. By way of starting to smoke in some pattern,  
16 whatever that pattern would be.  
17 MS. TYLER: I'm sorry, most people who  
18 start to smoke or most people or -- I do not  
19 understand your question.  
20 MR. MANNING: Do you want to repeat it,  
21 David, if you don't mind?  
22 (Record read.)

23 MS. TYLER: Objection.

24 A. A larger number would start smoking on a regular  
25 basis.

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1 Q. Do you in fact agree that most kids, that they  
2 most frequently start somewhere after 13 and usually  
3 before 18 by way of starting in some pattern to  
4 smoke?

5 MS. TYLER: Objection. Most kids who start  
6 smoking or most kids?

7 A. It's a category --

8 MR. MANNING: Most kids who start smoking.

9 MS. TYLER: It's not clear.

10 A. Most kids who start smoking start smoking. We  
11 have to hit it again. We are getting a no set  
12 there. There is nothing in there. Ask me again.

13 Q. We have said that kids who experiment with  
14 cigarettes, they most frequently experiment between  
15 the ages of 9, 11 or 12?

16 A. That first pass, yeah. Now that's not -- that's  
17 the modal, not the majority. Let's use the word  
18 specifically, a modal. That's a very high-frequency  
19 category. It's not the majority of kids.

20 Q. These are the kids that experiment?

21 A. Just that experiment.

22 Q. Now of those who start, of kids who start  
23 smoking in some pattern, whether it's 10 a day, a  
24 pack a day, two packs a day, 15 a day, but who start  
25 and smoke with some pattern, those who do that start

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1 to do that after age 13 and before 18?

2 A. Yes.

3 Q. Thank you.

4 MR. MANNING: Let's go to lunch.

5 (Luncheon recess taken at approximately

6 12:12 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Deposition reconvened at approximately  
3 1:19 p.m.)

4 BY MR. MANNING:

5 Q. Now Dr. Morse, you believe that the cause of 9,  
6 10 and 11 year olds starting to smoke is peer  
7 influence, family influence and significant others;  
8 is that right?

9 A. That would be the majority of all factors would  
10 be consumed within that area, yes.

11 Q. And no other factors?

12 MS. TYLER: Objection.

13 A. To the extent that there are other factors, and  
14 there will always be other factors in research  
15 science, they would contribute a minimal amount of  
16 variance.

17 Q. Now in addition to the activities that you  
18 listed as promotions you are also aware that  
19 cigarette companies use coupons as a promotion  
20 activity?

21 A. Yes.

22 Q. You are also aware that they do sponsorships?

23 A. No, I don't know what a sponsorship would be.

24 Q. You mentioned sporting events.

25 A. Yes.

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C O N F I D E N T I A L

1 Q. Were you referring to sponsorships at sporting

2 events?

3 A. I was responding like they have a car that has a  
4 logo on it.

5 Q. So are you familiar with the concept of  
6 sponsorship, of whether it be sporting events or  
7 other things or events?

8 A. I'm not sure I know exactly what you mean by  
9 that.

10 Q. Are you familiar with the role that cigarette  
11 companies play with respect to movies, in attempting  
12 to place cigarettes in prominent hands of male and  
13 female actors and actresses?

14 MS. TYLER: Objection.

15 Q. Are you familiar with that?

16 A. Yes.

17 Q. Was that included in your concept of promotions?

18 A. This morning?

19 Q. Yes.

20 A. Yes.

21 Q. Again, in your view, has no effect?

22 A. On?

23 Q. On kids starting to smoke.

24 A. Ages?

25 Q. Under 18.

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1 A. I have no evidence to that effect.

2 Q. How about over 18? How about anybody, does it  
3 have any impact on anybody?

4 A. I don't know.

5 Q. No evidence?

6 A. I don't have any evidence.

7 Q. And you have not read any?

8 A. No.

9 Q. And you have not asked the tobacco companies for

10 their evidence, of what evidence they have that the

11 amount of money that they spend on putting cigarettes

12 into the hands of female and male actors and

13 actresses, what evidence they have that impacts

14 sales?

15 MS. TYLER: Objection.

16 Q. You have not asked for that?

17 A. It's not scientifically, rigorously collected

18 data. It's not peer reviewed, it's not published,

19 published for public consumption so I would have no

20 knowledgeable way of having a way to gauge its

21 veracity, its viability, its reproducibility, its

22 validity.

23 Q. But you have not asked them for it, to see it,

24 so you haven't evaluated it.

25 A. For the reasons that it has no ability to

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1 ascertain its reliability, its validity, its

2 reproducibility, its scientific review, its peer

3 review, its outside objective review. I would have

4 no need to ask for it. At such time that happens,

5 then it will be available to the public.

6 Q. Such time as it is peer reviewed?

7 A. Hopefully one day it will be peer reviewed.  
8 Q. Such time it is published?  
9 A. Uh-huh.  
10 Q. Such time as the documents the tobacco companies  
11 have that refer to these issues are made public?  
12 A. No. We have to go back to where we are. It  
13 would have to be peer reviewed for its veracity, its  
14 viability, its reliability. I have no reason to  
15 believe that -- in their research. They are not a  
16 scientifically research-based organization, they are  
17 business. That may be biased, but that's the way I  
18 feel about it. I don't feel that they are --  
19 Q. So because they are a business and because they  
20 spend \$3 billion a year on promotions and a billion  
21 dollars a year on advertising, you have none -- let  
22 me just acknowledge this for the record so it's clear  
23 -- you have not asked for their documents that deal  
24 with these topics of, for example, cigarettes in the  
25 hands of actors and actresses and movies and its

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1 impact on people starting smoking. You have not  
2 asked for those documents.  
3 A. No.  
4 MS. TYLER: Objection.  
5 THE WITNESS: Sorry.  
6 Q. Now, you have seen studies that reflect that  
7 Marlboro is one of the most heavily smoked cigarettes  
8 by people under 18 years old?  
9 MS. TYLER: Objection.

10 A. Yes.

11 Q. You have seen that Camel, in the last eight to  
12 10 years, has become a brand of choice by kids under  
13 18?

14 MS. TYLER: Objection.

15 A. Yes.

16 Q. And that it was not a brand of choice by kids  
17 under 18 prior to eight to 10 years ago?

18 MS. TYLER: Objection.

19 A. I think that's implicit in it, in the material,  
20 yes.

21 Q. And you are aware of that.

22 A. Yes.

23 Q. And you are aware that R.J. Reynolds has taken a  
24 -- made a substantial move, from an advertising  
25 standpoint, in the last eight to 10 years using Joe

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C O N F I D E N T I A L

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1 Camel advertising?

2 MS. TYLER: Objection.

3 A. Are you asking professionally or asking me  
4 personally?

5 Q. On any level. If you feel a need to identify  
6 that, you go right ahead. I feel no need to identify  
7 one way or the other. You answer how you want to  
8 answer.

9 A. Professionally, I have no knowledge since I'm  
10 not an advertising expert, as to the number of  
11 dollars they have expended. Personally, on a

12 personal level, it's clearly visible they had

13 billboards up up until a while ago.

14 Q. And that's something you saw with some

15 regularity and frequency?

16 A. Yes.

17 Q. And were you aware that R.J. Reynolds has many

18 internal documents that made a concerted effort to

19 have their brand become appealing to youth about 10

20 years ago, that that was a concerted strategy that

21 they exercised?

22 MS. TYLER: Objection.

23 A. No.

24 Q. Nobody's ever told you that?

25 MS. TYLER: Objection.

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1 A. Nobody's ever told me that. Someone might have  
2 told me that on the face of the earth but I have no  
3 way of even knowing their veracity. I don't have any  
4 document that tells me that.

5 Q. And when --

6 Have you read any studies to the effect of Joe  
7 Camel on kids?

8 MS. TYLER: Objection.

9 A. Yes.

10 Q. Scientific studies.

11 A. Yes.

12 Q. What have they concluded, in your view?

13 A. After being fully scrutinized the articles were

14 disqualified as professionally collected materials

15 and were -- I think the field has generally said that  
16 they are not appropriate.  
17 Q. Why is that?  
18 A. The data potentially was not collected  
19 appropriately or maybe their rigors of research were  
20 not followed effectively.  
21 Q. Do you remember what studies those were?  
22 A. Dr. Fisher studies.  
23 Q. Dr. Fisher studies?  
24 A. Uh-huh.  
25 Q. Anybody else's studies?

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C O N F I D E N T I A L

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1 A. No, not that I know of.  
2 Q. Pardon me?  
3 A. Not that I know of.  
4 Q. Any titles of his --  
5 A. No.  
6 Q. -- studies that you recall?  
7 A. No.  
8 Q. What do you recall that was flawed about his  
9 studies?  
10 A. The way the actual material was collected with  
11 the young children.  
12 Q. What was flawed about that, to your knowledge?  
13 A. The way it was presented.  
14 Q. How, why? What about it?  
15 A. Sorry, sir, I don't have the article in front of  
16 me. If we have the article I'll review it, I'd be

17 happy to review it with you, but I don't have the  
18 article.  
19 Q. I understand that. If you don't remember, tell  
20 me --  
21 A. I don't remember.  
22 Q. You can't give me any more details why it was  
23 flawed, at least from memory, as you sit here?  
24 A. That would be fairly significant, what I've  
25 given you right there.

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C O N F I D E N T I A L

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1 Q. That what, the data was collected improperly?  
2 A. Yes.  
3 Q. Do you know how or why?  
4 A. No, I do not sir. I have no idea why the  
5 researcher did it.  
6 Q. Do you believe that the concerted advertising  
7 campaign of Joe Camel was designed to appeal to  
8 youth?  
9 MS. TYLER: Objection.  
10 A. I have no basis upon which to determine who it  
11 was designed for.  
12 Q. So you could not assess a cartoon character, so  
13 to speak, and whether it was designed to appeal to  
14 people under 18 years of age; correct?  
15 A. I -- That is not my area of expertise.  
16 Q. I understand. And you can't -- personally, your  
17 personal viewpoint of seeing that, you cannot develop  
18 and have not developed one iota of a thought even, as  
19 an individual or person, about who that cartoon



20 character may appeal to?

21 MS. TYLER: Objection.

22 A. Yes, I have.

23 Q. What is that?

24 A. My children laugh and say that people are silly  
25 if they think kids would want to smoke a cigarette

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C O N F I D E N T I A L

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1 because a camel smokes a cigarette. He's kind of  
2 ugly and has big lips and it doesn't encourage them  
3 to smoke cigarettes.

4 My children are fairly -- When numbers of them  
5 get in a car with friends they really laugh and say  
6 what is it about American society that thinks that  
7 would make me smoke a cigarette, and they are 10, 11,  
8 12, 13 and growing older, and they think that it's  
9 humorous that anyone would ever think that that was a  
10 reason to smoke.

11 Q. They notice it?

12 A. Yes, they laugh and they notice it.

13 Q. They laugh about it?

14 A. Yeah, they sure do.

15 Q. They talk about it amongst themselves as peers?

16 A. They talk about it straight with us, yes, very  
17 open, say adults are very silly, misled. They never  
18 listen to us is what kids say. They say, why don't  
19 they ever ask us those questions about Joe Camel.  
20 They always talk with themselves, they come with a  
21 newspaper, they come when they watch the news, they

22 say, why don't they ever ask kids? Why are they  
23 always asking adults about that? We are the kids.  
24 Q. Who is asking the adults about that? What are  
25 you referring to?

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1 A. That's what they are referring to. I don't  
2 know. They just come to me, say they think there is  
3 news media, talk about Joe Camel and they say "nobody  
4 ever asked us about it." So that's all I know. And  
5 they think it's rather humorous. I just say, why  
6 don't you just leave them alone, you know. They sit  
7 around, see our data and our research and know what  
8 it looks like.  
9 Q. They talk with you because they know you work in  
10 this area and you talk with them about what you do;  
11 right?  
12 A. Sure.  
13 Q. And you think your kids are representative of  
14 all kids in America?  
15 A. No, absolutely not.  
16 Q. Have you read the interviews that R.J.R.  
17 Reynolds has done with kids as to their views of Joe  
18 Camel when they have done interviews of 14 year olds,  
19 15 year olds, 17 year olds, 19 year olds?  
20 A. No.  
21 MS. TYLER: Objection.  
22 Q. Have you asked them?  
23 MR. MANNING: Objection.  
24 A. Asked who?

25 Q. Asked the tobacco companies about their

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C O N F I D E N T I A L

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1 interviews with kids about Joe Camel.

2 A. No. I would never do that.

3 Q. Have you asked their ad agencies or asked them

4 to produce to you the interviews that their ad

5 agencies have done with kids about Joe Camel?

6 A. The material that they are presenting would have

7 to serve their own best interest, particularly the ad

8 agency. The industry itself, I don't have any reason

9 to believe that they would do scientifically rigorous

10 materials and data and research studies that would be

11 peer reviewed and acceptable for publications in a

12 larger scientific audience.

13 Q. Now, do you think Marlboro has had a successful

14 advertising campaign?

15 MS. TYLER: Objection.

16 A. As measured by?

17 Q. Just a question.

18 MS. TYLER: Objection.

19 Q. Do you think Marlboro has had a successful

20 advertising campaign with the Marlboro Man over a

21 period of time?

22 .

23 MS. TYLER: Objection.

24 A. I have no idea.

25 Q. No idea? Good. How about do you think that

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1 Philip Morris, through Marlboro Man, do you think  
2 that they have been effective at attracting kids to  
3 smoke Marlboros through their advertising campaign of  
4 the Marlboro Man?

5 A. The evidence that I would have would indicate  
6 no.

7 Q. What is that evidence?

8 A. The largest piece of evidence would be -- have  
9 been collected by the FDA.

10 Q. That's the interviews with kids?

11 A. That's right. That's not interviews with kids,  
12 no, that's focus groups.

13 Q. Focus groups with kids?

14 A. That's not interviews.

15 Q. Are you familiar with the studies that say  
16 pretty strongly that all people, including kids,  
17 underreport the effects of advertising and  
18 promotions?

19 MS. TYLER: Objection.

20 Q. Are you familiar with those studies?

21 A. I'm sorry, repeat the question, please.

22 Q. Are you familiar with the studies that report  
23 that all people, including kids, underreport the  
24 effects of advertising and promotions?

25 MS. TYLER: Objection.

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1 A. Yes, uh-huh.

2 Q. There are a number of those studies; right?

3 A. Uh-huh.

4 Q. Correct?

5 A. Yes.

6 Q. You have read them?

7 A. Yes.

8 Q. And you don't disagree with them?

9 MS. TYLER: Objection.

10 A. I just take them as one perspective. I don't

11 agree or disagree with them. I personally don't feel

12 they are probably correct, but that's all right. I

13 haven't done a study there --

14 Q. They are peer reviewed?

15 A. That's correct. That doesn't make them the

16 truth.

17 Q. Peer reviewed doesn't make a study the truth,

18 does it?

19 A. That's correct.

20 Q. But at least the studies I'm referring to about

21 young people underreporting the effects of

22 advertising, as well as adults underreporting the

23 effects of advertising, that's not falsified data, is

24 it?

25 A. Not that I know of.

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1 Q. There are studies that are within a body of

2 research that is out there in your field; correct?

3 A. Uh-huh.

4 Q. Correct?

5 A. Yes.

6 Q. You have not cited those studies in your report,

7 have you?

8 A. No, because I wouldn't rely on them. I'm not

9 relying on them.

10 Q. No. And you wouldn't rely on those, would you?

11 A. Not necessarily. They don't relate to --

12 specifically to what I study, which is high-risk

13 behavior patterns, the causes thereof, of children

14 and young adults.

15 Q. But one of the bases for your opinion, in fact

16 the largest basis for your opinion that the

17 advertising promotions have no impact on kids is what

18 kids self-report --

19 MS. TYLER: Objection.

20 Q. -- in studies; correct?

21 MS. TYLER: Objection.

22 A. Primary data sources would be by children. The

23 younger persons report themselves, that's correct.

24 Q. And so if that is the primary basis upon which

25 you have formulated your opinion, the self-reporting

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1 of children, then would -- would it be acceptable for

2 you as an objective, impartial researcher to ignore

3 studies or disagree with peer-reviewed studies that

4 talks specifically about the topic of how children

5 report their impact of advertising and promotions on

6 them?

7 MS. TYLER: Objection.

8 Q. Is that acceptable, in your view?

9 A. You have asked two questions. If you could  
10 split them in half I'd be glad to speak with you.  
11 Which question would you like me to answer?

12 Q. You pick.

13 A. Not my world. You asked --

14 Q. It really is your world, it really is.

15 A. Can I have a question? Please, sir, I don't  
16 understand the question you are asking.

17 Q. I've asked you a question.

18 A. But it has two different pieces, parts unfolding  
19 and I --

20 (Interruption by the reporter.)

21 Q. You don't understand the question I asked you?

22 A. Do not understand the question.

23 MS. TYLER: Would you repeat the question,  
24 David?

25 (Record read.)

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1 Q. Is the reason that there is two questions is  
2 that one says "ignore" and the other "disagree  
3 with"?

4 A. Correct.

5 Q. All right. Then answer the question with the  
6 word "ignore." Is it fair for you to ignore those  
7 studies?

8 MS. TYLER: Objection, misstates his  
9 testimony.  
10 A. I didn't specify I ignored them. In fact, quite  
11 the opposite.  
12 Q. What's your testimony about those studies? Did  
13 you consider them?  
14 A. Uh-huh.  
15 Q. And did you say that you rejected them?  
16 MS. TYLER: Objection.  
17 A. We will withhold reservation as to the extent to  
18 which there is an actual distortion or inappropriate  
19 level of reporting.  
20 Q. Are you going to withhold reservation, is that  
21 what you said?  
22 A. Yes, withhold.  
23 Q. Have you taken it into account in your opinion?  
24 A. I believe so.  
25 Q. But you haven't cited any in your report.

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1 A. No.  
2 Q. Do you disagree with the studies?  
3 A. I don't know how to put a parameter around  
4 them. It's not -- I don't agree or disagree. As one  
5 would say, the jury's still out. Got to have more  
6 studies done before we have very much of a finding  
7 here. Doesn't say they are bad, good or in between  
8 or I object to them or don't object to them.  
9 Underreporting and overreporting of survey data is a  
10 methodological issue which I'd be happy to discuss



11 with you, but it's not something that there is a  
12 great deal of information on today.  
13 Q. Well then as you said, at least as to this issue  
14 of children underreporting, which you do agree  
15 impacts on the very basis upon which your primary  
16 opinion is based; correct?

17 MS. TYLER: Objection.

18 Q. Children and their self-reporting?

19 A. It has some impact. How to characterize that, I  
20 don't know at this time. So much of it is already  
21 absorbed in other categories that you are talking of  
22 a relatively small amount of information and  
23 variance, no matter what, so it ain't large so -- but  
24 that doesn't mean it's not -- couldn't be important  
25 in the future. It doesn't mean, if it's appropriate

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1 to say that, in this context, the jury is still out.  
2 I will certainly leave an open mind to it.

3 Q. What primary research have you done on smoking  
4 behavior?

5 A. I look at cigarette smoking in the context of  
6 other high-risk behavior patterns.

7 Q. I want to know specifically what primary  
8 research you've done yourself on smoking behavior.

9 A. Currently involved in a study of high-risk  
10 behavior patterns of young -- not young, adolescents  
11 transitioning into IDU behavior, and one of the  
12 contexts, or sort of a, a point to give us a marker

13 is their use of cigarettes. It's one of a continuum  
14 of high-risk behaviors.

15 Q. Is this the first primary research you have done  
16 on smoking and IDU?

17 A. No. It's -- I've used it with male prostitutes  
18 to examine their activity in relationship to  
19 high-risk behavior patterns, and one of the high-risk  
20 behavior patterns they would engage in would be  
21 cigarette smoking.

22 Q. So in the course of your research on male  
23 prostitutes and high-risk behavior, HIV infection  
24 that I've seen you published on, you are saying that  
25 research is also related to smoking?

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1 A. Smoking is just one of the high-risk behavior  
2 patterns they engage in, yes.

3 Q. How did you research smoking when you were  
4 dealing with male prostitutes?

5 A. Asked them whether they smoked, observed they  
6 smoked, observed the quantities that they smoked or  
7 reported smoking.

8 Q. Did your final report on HIV and male  
9 prostitutes contain any information on smoking?

10 A. No. We had hoped we would find variation in  
11 that behavior pattern. We were somewhat naive at  
12 that time. This is in 1988, '89, and in collecting  
13 it, found that cigarette smoking in male prostitutes  
14 was ubiquitous so no point in, you know, providing a  
15 constant to the field.

16 (Plaintiffs' Deposition Exhibit 4100 was  
17 marked for identification.)

18 BY MR. MANNING:

19 Q. Sir, showing you what's been marked as Exhibit  
20 4100, that's your report, right, a copy of your  
21 report?

22 A. Yes.

23 Q. If you look at your curriculum vitae, which is  
24 attached to the report at the back, can you just  
25 educate me? I cannot see one reference in one study

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1 that you have been involved in, study, workshop,  
2 paper, posters, paper submitted, anything in your CV  
3 that has the word "smoking" in it. Could you please  
4 correct me where I'm wrong?

5 A. No. I think that would be correct.

6 Q. So in your lengthy CV here that lists all the  
7 articles and, as I said, papers, on and on, that you  
8 have, a lot about sexual behavior, a lot about HIV, a  
9 lot about male prostitutes, various other topics,  
10 that's a topic that weaves itself through what I just  
11 said, there is not one word that says "smoking";  
12 correct?

13 MS. TYLER: Objection.

14 A. In this -- On these pages?

15 Q. Yes.

16 A. No. It would appear -- When we actually did the  
17 work would be in the "Cofactors of Substance Use  
18 Among Male Street Prostitutes."

19 Q. Now --  
20 A. That's the Journal of Drug Issues, 1992.  
21 Q. I'm sorry?  
22 A. You asked me for --  
23 Q. Are you pointing to something where the word  
24 "smoking" exists?  
25 A. No, no. I said where we would look at substance

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1 use. The rest of these don't.  
2 Q. I'll ask the next question; okay?  
3 A. Okay.  
4 Q. Now, can you point to me in your CV one of these  
5 articles that discusses smoking, has the word  
6 "smoking" in the article that you have written or  
7 been a part of or done any research?  
8 A. That we reported smoking behavior? No. Where  
9 we have looked at it would have been within the  
10 article in Journal of Drug Issues, and since it was a  
11 constant there wasn't any point in talking about it.  
12 Q. Okay. So it's fair to say for this jury when  
13 you are standing up here attempting to testify as an  
14 expert on children and smoking that in your  
15 curriculum vitae, one, as we have already  
16 established, not once in any of these pages of  
17 attached articles, grants, research technical  
18 reports, papers read, book reviews, workshops  
19 conducted, posters and other articles published and  
20 copublished with others, not once in any of the  
21 titles does the word "smoking" or "tobacco" appear;

22 correct?

23 A. That would be correct.

24 Q. Also it's fair to say within not one of these  
25 articles as published within the body of each and

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1 every one of them, not once does the word "smoking"  
2 or "tobacco" appear; correct?

3 MS. TYLER: Objection.

4 Q. Correct?

5 A. Boy, that gets a little more --

6 Not to my recollection. I would -- I don't  
7 recall that that would be the case.

8 Q. So you would agree with me, sir, that in fact  
9 you have not done primary research on smoking  
10 behavior?

11 MS. TYLER: Objection.

12 A. Absolutely not, sir. I would not agree with  
13 that.

14 Q. Then the primary research that you have done is  
15 when you have talked and asked people in the course  
16 of interviews about their smoking behavior; correct?

17 MS. TYLER: Objection.

18 A. No, that is not correct.

19 Q. What is the primary research that you believe  
20 you have done on smoking behavior?

21 MS. TYLER: Objection.

22 A. I have examined a large number of documents with  
23 regard to the FDA's focus groups and their

24 relationship to smoking. In our own research  
25 ongoing, smoking behavior is a primary factor that is

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1 explored as one high-risk behavior that they may  
2 engage in, and if they engage in it we ask them  
3 questions about it. That is ongoing.  
4 Q. Any other areas that you would consider to be  
5 primary research in smoking or tobacco than what you  
6 just listed?

7 A. As best I can recall this minute, those would be  
8 the primary.

9 Q. And so to be clear, to examine FDA documents on  
10 focus groups, et cetera, you consider that to be  
11 primary research even though you are reading somebody  
12 else's reports?

13 MS. TYLER: Objection.

14 Q. Is that right?

15 A. I'm just interpreting the data.

16 Q. That's right. But you consider that to be  
17 primary yourself?

18 A. Yeah, within reason.

19 Q. You know, some people may consider that to be  
20 secondary, but you consider it to be primary?

21 A. No. I actually looked -- I was looking at the  
22 actual documentation itself. It had never been  
23 digested, never been touched, never been altered in  
24 any way, shape or form, never been put in a library  
25 of data, never been altered in any way, shape or

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1 form. It was in its rawest, fullest extent as  
2 provided by the FDA and made available to the  
3 public. That's got to be primary research; nobody  
4 did anything to it yet.

5 Q. Now as to the times you have explored smoking in  
6 interviews, you consider that to be primary research  
7 even though in not one of your publications of any  
8 way, shape or form, your publications, all of which  
9 are listed a few times in your CV, does the word  
10 "smoking" or "tobacco" find its way into one of your  
11 publications?

12 MS. TYLER: Objection, misstates his  
13 testimony.

14 Q. Correct?

15 A. Misstates my testimony. That's not what I  
16 said. I said I'm currently engaging in this research  
17 now under a current grant.

18 Q. Who is the current grant from?

19 A. Centers for Disease Control.

20 Q. But up until now --

21 We are going to talk about the current one you  
22 are doing; okay? And on the current one you are  
23 doing you might have smoking in the title, you might  
24 not, you don't know yet because you haven't read the  
25 paper.

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1 A. I haven't written the paper on that data yet,  
2 no.  
3 Q. Do you intend to?  
4 A. Oh, yeah.  
5 Q. When?  
6 A. When we collect sufficient amount of data.  
7 Q. Do you know --  
8 A. When I'm ready.  
9 Q. Do you know when that will be?  
10 A. When I'm ready.  
11 Q. Well, I understand. Do you know when you will  
12 be ready?  
13 A. When I'm ready.  
14 Q. I think I'm asking another question, and that  
15 is: Do you know when you will be ready?  
16 A. No.  
17 Q. Thank you.  
18 You don't have any parameters on when you need  
19 to publish that, is that right, from your grant?  
20 Your grant doesn't require you have it out in a  
21 certain period of time?  
22 A. No.  
23 Q. So in the primary research that you have done  
24 examining the FDA documents you have talked about and  
25 your current project, which we will come to talk

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1 about, other primary research you have done is what  
2 we have talked about where you had interviewed people



3 in the course of exploring other issues such as male  
4 prostitution --  
5 A. Exploring substance use issues.  
6 Q. And exploring substance issues, but never has  
7 that -- the word "smoking" or "tobacco" as a result  
8 of those interviews found its way into any of your  
9 papers?  
10 A. Not as I recall.  
11 Q. And are you doing this current research with  
12 somebody?  
13 This current research you are doing for the CDC,  
14 is there a grant for it?  
15 A. Yes. It's in my vitae. I supplied you my  
16 vitae. I believe it's in that document.  
17 Q. And who -- And the CDC is funding that; is that  
18 correct?  
19 A. That's correct.  
20 Q. Can you point it out to me?  
21 A. If you turn to the last page.  
22 Q. Yup.  
23 A. Third down.  
24 Q. Walter et al, Risk Behaviors?  
25 A. No, sir, the last page.

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1 Q. Of your CV. I'm sorry.  
2 A. Correct.  
3 Q. Thank you. Third down, HIV and use among -- and  
4 drug use among young adults, \$996,000, funded by  
5 Centers for Disease Control and Prevention. You're

6 the principal investigator; is that right?  
7 A. That's correct.  
8 Q. What other drug use are you exploring besides  
9 smoking, besides tobacco?  
10 A. Heroin, cocaine, crack, speedballs, crystal  
11 methamphetamine, nitrates, marijuana, barbiturates.  
12 That is all.  
13 Q. And you intend to ask these --  
14 A. Already are.  
15 Q. And where are you interviewing these male  
16 prostitutes; all over the country?  
17 A. Wrong, different group now. Didn't say anything  
18 about male prostitutes.  
19 Q. Sorry. Now we are talking about HIV and drug  
20 use among young adults. Where you finding these  
21 people?  
22 A. In the street.  
23 Q. In New Orleans?  
24 A. I am. This is a six-site study so they would be  
25 at six different sites in the country. I'm only one.

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1 Q. And you're asking these people who are HIV  
2 positive; is that right?  
3 A. No, sir. I don't know what their status is. I  
4 have no idea.  
5 Q. Tell me about the study. How are you going  
6 about it? What's it about?  
7 MS. TYLER: Objection.

8 Q. Tell me about the study, please.

9 A. We are attempting to understand the point

10 prevalence incidence of HIV, hepatitis B and C,

11 gonorrhea and chlamydia of population of, in the

12 vernacular, people would call gutter punks or roving

13 street populations and population of persons who are

14 stabilized in the city of New Orleans.

15 Q. And so how do you go about finding someone you

16 want to interview, just walk up on the street and

17 talk to people, or how does this -- how does somebody

18 qualify to become an interviewee?

19 A. They would have to pass a screening, they would

20 be known to shoot drugs, because that's the important

21 piece, that they shoot drugs, they would be known by

22 others to be active in that community and area.

23 Q. Of shooting drugs?

24 A. Right. And they would know the vocabulary, they

25 would know the symbolic relationships, they would

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1 basically know the vocabulary, would tell us

2 approximately, plus or minus, whether they are

3 shooting.

4 Q. And then you obviously first determine whether

5 they are qualified, so to speak, to be interviewed,

6 meet these criteria?

7 A. Yes. Well first they have to be consented, then

8 they are -- after they are consented, then we talk to

9 them.

10 Q. Do they get paid?

11 A. We give them food vouchers, \$15 worth of food  
12 vouchers for participating.  
13 Q. What is it, a half hour interview, hour?  
14 A. Two hours.  
15 Q. Two-hour interview.  
16 A. Plus blood draws, urine draws. Probably closer  
17 to two and a half hours.  
18 Q. Anonymous interviews, they do the blood and  
19 urine but it's never traced to them?  
20 A. It's definitely traced to them, absolutely  
21 traced to them. This is a study that these people  
22 are infected, they need help, they offer help. They  
23 come back to get their findings. Not blind, no.  
24 It's blinded to everyone that's working with it, not  
25 blinded to me. There is one link file, and myself

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1 and the project director under me has that in this  
2 community. How other cities operate their share of  
3 it, I would assume it's approximately the same.  
4 Q. What are the other cities?  
5 A. Los Angeles -- Wait a second. New Orleans,  
6 Los Angeles, two in New York, Baltimore and Chicago.  
7 Q. And you have people who are trained interviewers  
8 in those cities?  
9 A. No, no, no, I just have -- I'm just responsible  
10 for New Orleans.  
11 Q. There are other people who are trained  
12 interviewers in those cities who would do the  
13 interviews with the other kids?

14 A. And they are conducted and directed with a PI  
15 who is a very high status, extremely high status.  
16 Q. And all of these young people, most of them  
17 young people?

18 MS. TYLER: Objection.

19 A. What's the young people?

20 Q. Are most of those people young people who are --  
21 drug use among young adults?

22 A. Eighteen to 30 years of age.

23 Q. Eighteen to 30. So in that group you ask each  
24 of them do you use heroin; right? Do you use  
25 cocaine?

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1 A. Uh-huh.

2 Q. Do you use crack?

3 A. Uh-huh.

4 MS. TYLER: You need to answer verbally.

5 A. Yes.

6 Q. Do you do speedballs?

7 A. Yes.

8 Q. Do you smoke cigarettes?

9 A. Yes.

10 Q. Do you use nitrates?

11 A. Yes.

12 Q. Do you use barbiturates?

13 A. Yes.

14 Q. Do you use marijuana?

15 A. Yes.

16 Q. When you ask them about cigarettes, do you ask  
17 them about brand?  
18 A. No.  
19 Q. When you ask them about cigarettes, do you ask  
20 them how often they smoke, or just do they?  
21 A. Do they, and then the situation under which they  
22 use them is more important.  
23 Q. So you ask them the details of their smoking  
24 habit?  
25 A. Right.

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1 Q. Just like you ask them the details of their  
2 heroin habit, --  
3 A. Correct.  
4 Q. -- cocaine habit, crack habit, speedball  
5 habit, --  
6 A. Correct.  
7 Q. -- nitrate habit ,--  
8 A. Correct.  
9 Q. -- Barbiturate habit, marijuana habit.  
10 (Interruption by the reporter.)  
11 (Recess taken from 1:53 to 1:58 p.m.)  
12 BY MR. MANNING:  
13 Q. So, sir, when all this research is done and the  
14 data is in you intend to do a report on those  
15 individuals who are drug users who are also -- may or  
16 may not be HIV positive; is that right?  
17 A. Yes.  
18 Q. Chances are many of them are, I presume, but --

19 A. I hope not.  
20 Q. Okay. I understand. But that is a common  
21 transmission of HIV --  
22 A. Yes.  
23 Q. -- is through needle use; right?  
24 A. Yes.  
25 Q. And what is the kind of hypothesis of the

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1 study? You are trying to figure out what?  
2 A. In the previous research since the late '80s to  
3 now, examined that high-risk behavior patterns  
4 potentially cluster together and that's why there is  
5 a continual theme, whether they are published on or  
6 not, a continuous theme of exploring high-risk  
7 behavior patterns. For me they are particularly  
8 substance use because that is the relationship of  
9 HIV. The index case of smoking is asked in the male  
10 prostitutes, I ask that of male prostitutes.  
11 Interviewing in the study of women with HIV and they  
12 are dying, a second study, I observed it and watched  
13 and looking why people smoked for the FDA and why I  
14 was interested in reading that as yet another  
15 context, and in this current study, so that covered  
16 the last ten years of my study. Everywhere is  
17 peppered throughout with the examination of all -- as  
18 many substances of high-risk behavior, trying to  
19 understand how they fit into high-risk behavior  
20 patterns in general, of which cigarettes is always

21 one of them because they are a high-risk matter as we  
22 have discussed earlier.

23 Q. And why are they a high-risk matter?

24 A. Well I think the Center for Disease Control  
25 reports in the MMWR, as you and I have reviewed

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1 earlier this morning, would indicate that smoking is  
2 a high-risk behavior.

3 Q. Right.

4 A. I don't think it needs to be explored further.

5 Q. Okay. Then we won't.

6 But what you're studying here in this study for  
7 -- with close to a million bucks is not only all  
8 this substance use and abuse but how it relates to  
9 individuals. I think you referred to them, I'm sure  
10 in a not inappropriate way, but as "gutter punks"?

11 A. One portion that are gutter punks and the other  
12 portion are more stable, persons who actually live --  
13 "gutter punks" is a more transitory population, most  
14 frequently white, Caucasian, some Hispanics, smaller  
15 portion African American or black. On to the other  
16 side of New Orleans, the other portion would be  
17 probably -- well is now working at would be 100  
18 percent African American or black.

19 Q. But you are looking at substance abuse and how  
20 it relates to whether or not people are HIV positive?

21 A. No. We are transitioning into shooting drugs.  
22 They have done all these drugs.

23 Q. Right.



24 A. How do they transition, why do they transition  
25 into now the next escalation up of more high-risk

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1 behavior. We started off 10 years ago looking way  
2 down here at one corner, HIV and male prostitutes;  
3 then the study of mothers, HIV-infected mothers and  
4 their children. We looked at all the spectrum of all  
5 the drugs, including cigarettes as a substance, then  
6 we moved to the next subset and we say, okay, here,  
7 we have yet another current pattern, here is a group  
8 of persons where we will collect 300 total, we will  
9 -- in collecting them we will then want to  
10 understand their patterns over time -- it's not a  
11 one-time study -- over time why and how they  
12 transitioned into shooting drugs, and then how do  
13 they move in and out of that. And each of these  
14 substances are moving up and down. One day they may  
15 smoke, the next day they may not. One day they are  
16 at heroin, maybe they are not. I forgot alcohol in  
17 there, is a biggy, up or down. And it's a moving  
18 pattern, and when they are moving they are increasing  
19 the probability of risk to their lives.

20 Q. But then you also, because of the drug use and  
21 shooting and using a needle, you also look at how all  
22 this relates to HIV or not?

23 A. Yes. And how it relates to violence, violence  
24 they are exposed to and violence they commit.

25 Q. Okay.

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1 A. Those would be the larger areas. We also look  
2 at the family, family context, peer influence, peer  
3 relationships, their dependency on religiosity and  
4 what are the protective mechanisms that may obviate  
5 anything of a dose response.

6 Q. So you would agree that in all of the issues you  
7 are looking at here, violence, family, peer, HIV,  
8 needle use, not the how, the moving in and out, the  
9 behavior patterns, all the different substances, of  
10 all the issues you are looking at in these 300  
11 individuals you would agree with me that -- that  
12 smoking behavior is one very small aspect of this  
13 study?

14 MS. TYLER: Objection.

15 A. Not at all. Smoking is a high-risk behavior  
16 pattern.

17 Q. But in terms of its overall behavior in all of  
18 these other behaviors and issues that you are looking  
19 at from a study standpoint, would you agree it's a  
20 small aspect of the study?

21 MS. TYLER: Objection.

22 A. No, sir.

23 Q. Okay. Great. All right. Now do you have any  
24 idea, sir, what the intent of tobacco companies has  
25 been with respect to their advertising to youth?

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1 MS. TYLER: Objection.

2 A. No. I'm not privy to their intent, no.

3 Q. And you have not explored that, you don't know  
4 what the intent is of the tobacco companies in their  
5 advertising to youth; correct?

6 A. No, I don't know what their specific intent is.

7 Q. Don't you agree that if 400,000 people die every  
8 year from smoking, as indicated by the CDC, that the  
9 vast majority of those persons would have started  
10 smoking before they were age 18? Correct?

11 A. Could you repeat the question, please?

12 Q. Sure. Of the 400,000 people that the CDC  
13 reports who die every year from smoking, the vast  
14 majority of those persons would have started smoking  
15 before age 18; correct?

16 A. Could you rephrase your question so that it --  
17 it's a distortion of the data. They don't die of  
18 cigarette smoking; they die of a variety of  
19 diseases. I'm sorry, can't say they die of cigarette  
20 smoking. They die of cardiovascular disease, lung  
21 disease, tumors, et cetera, et cetera, et cetera.  
22 The CDC does not say they died of cigarette smoking.  
23 It's not a small point. So we can get on target, it  
24 would be helpful for me.

25 Q. In fact what they say is the 400,000 people die

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1 from various illnesses that are related and  
2 associated to cigarette smoking?

3 A. Absolutely.

4 Q. And of those people who die from those  
5 illnesses, that the vast majority of that 400,000  
6 have started smoking before they were 18 years old?

7 A. That is our best knowledge to date as reported  
8 by the CDC, yes.

9 Q. And to your knowledge, the tobacco companies  
10 know that, don't they?

11 MS. TYLER: Objection.

12 A. I don't know. It's a public document.

13 Q. They should know it, shouldn't they?

14 A. I would say yes.

15 Q. Yeah. They should probably read those and  
16 understand that -- that the vast majority of people  
17 who are dying every year from something associated or  
18 related to smoking actually started doing it before  
19 they were 18. They really ought to explore that,  
20 shouldn't they?

21 MS. TYLER: Objection.

22 A. You know, we are pushing past the factor of what  
23 is commonly known in the society, whether they  
24 specifically know it per se, that I do not know and  
25 I'm not privy to.

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1 Q. Now we have talked about how I've asked you to  
2 assume that in fact the tobacco companies do study  
3 demographically, target kids, advertise to kids, on  
4 and on; okay? We have talked about that.

5 A. Yes.

6 Q. This is just a preliminary comment. Well in  
7 fact don't you agree with me that if they didn't do  
8 that, if they stopped that and if in fact the  
9 executives of these companies stood out, even  
10 together, and stated how awful and horrible smoking  
11 is for kids and stopped all of their targeting and  
12 advertising and all their promotional efforts and  
13 publicly said to kids repeatedly themselves with  
14 their own talking heads, repeatedly said to them not  
15 just once or twice but said don't do it, we have got  
16 to reverse our behavior pattern, we want the laws  
17 enforced, we want everything done but we, the  
18 executives of these companies, say every day and  
19 every week on TV and on and on and on, don't do this,  
20 don't do this, and don't start, if you start it's  
21 going to kill you and on and on and on, they would  
22 have an impact, wouldn't they?

23 MS. TYLER: Objection.

24 Q. Wouldn't they?

25 A. Sir, which part of the question -- where is the

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1 question?

2 Q. If those executives stood up and did that, all  
3 of what I said, they would have an impact, wouldn't  
4 they?

5 A. I have no idea.

6 Q. Not even as a human being, as a person of common  
7 sense, can you determine whether they would have an

8 impact? You just have no idea?

9 MS. TYLER: Objection.

10 A. As a scientist I would have a great quandary and  
11 wonder what would be the outcome. Might be very  
12 negative. Might be very surprising to the world what  
13 that kind of thing would do. So I would have to say  
14 no, I don't know. It would be open to scientific  
15 experimentation to find out what would happen if they  
16 did that.

17 Q. We at least know one thing, don't we, they have  
18 never done that?

19 A. They have never done that.

20 Q. I'm going to ask you to assume some things like  
21 we have talked about above -- okay? -- some of the  
22 same things, so do them quickly. One, that tobacco  
23 companies can in fact influence kids, assume that;  
24 okay? That they do target kids, that they advertise  
25 to them, that they do promote to them and they spend

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1 very little money telling them of the severe  
2 consequences, very little. They also know that the  
3 only way they can continue their market is to get  
4 young kids, targeted advertising campaigns to build  
5 brand-name recognition, and assume they know it  
6 works.

7 If you were to discover those things that I just  
8 indicated in tobacco companies' files, if you were to  
9 discover those things and they were true, would you

10 withdraw your opinion?

11 MS. TYLER: Objection.

12 A. You have asked here to make a large number of  
13 unrelated assumptions for which I have no scientific  
14 or even historical evidence, nor have you provided me  
15 anything that would indicate that could or would or  
16 even might be the case, and I have a hesitancy,  
17 having never seen such material before to indicate  
18 that, it's frivolous speculation for which I am not  
19 sure -- there is no basis for me to -- which to  
20 assist you by answering the question. I am -- I  
21 can't keep that many ifs in the air and end up with  
22 something that's realistic.

23 Q. Isn't it true, sir, that you assume that  
24 whatever advertising has been done -- that you have  
25 assumed this up until now before coming in here

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1 today, you have assumed that whatever advertising has  
2 been done by the cigarette companies, that it was not  
3 aimed at kids?

4 MS. TYLER: Objection.

5 A. I have not stated that. That is not my  
6 testimony.

7 Q. Sir, I want to show you --

8 Did you have an opportunity to read your  
9 deposition from the Mississippi case?

10 MS. TYLER: I object this instant to you  
11 showing this witness or referring in any way to a  
12 document that has not been predesignated. Has this

13 been predesignated, Mr. Manning?

14 MR. MANNING: I don't have to predesignate  
15 documents for impeachment, the order so specifically  
16 says. Consult with your lawyers.

17 MS. TYLER: Let's take a minute. I want to  
18 take a look at the order before you show him a single  
19 document to make sure it complies with the stipulated  
20 order, because I don't believe it does.

21 MR. MANNING: I believe it does. Let's go  
22 off the record.

23 MS. TYLER: Let's go off the record.

24 MR. MANNING: I just want the record to be  
25 clear that you as the lawyer are interrupting my line

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1 of examination and interrupting me in the middle of a  
2 question, which I believe is inappropriate.

3 MS. TYLER: You are about to show this  
4 witness a document which is impermissible under the  
5 stipulated order, and I'm permitted to use the  
6 stipulated order, as stipulated between the parties,  
7 to prevent you from engaging in improper conduct.

8 (Discussion off the record.)

9 MS. TYLER: Mr. Manning, is it your  
10 position that you are using this undesignated  
11 deposition exhibit for genuine impeachment?

12 MR. MANNING: You bet I am.

13 MS. TYLER: You may proceed.

14 BY MR. MANNING:



15 Q. Sir, have you read your deposition that you gave  
16 in the state of Florida?  
17 A. I believe so.  
18 Q. The lawyers sent it to you?  
19 A. Uh-huh.  
20 Q. And you had a chance to read it? Did you sign  
21 it under oath or did you waive the signing, do you  
22 know?  
23 A. No, I -- I signed it.  
24 Q. Sent it back?  
25 A. Yes.

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1 Q. So I'm just going to read to you, if you can --  
2 if I can, a question that was asked of you; okay?  
3 A. Uh-huh.  
4 Q. I can read the one above and the answer so you  
5 have the context, if you will.  
6 So you believe you can testify that no company,  
7 cigarette companies to your knowledge advertised to  
8 adolescents to motivate them to engage in cigarette  
9 smoking. You believe you can testify to that.  
10 Answer: I don't know their motivation. I don't  
11 see -- I don't think that they have any impact on  
12 children whatsoever.  
13 Question: I didn't ask about their impact. But  
14 you cannot testify, you would agree, as to the  
15 motivation of cigarette manufacturers?  
16 Answer: It was motivated to do something.  
17 There is no outcome variable that indicates in any

18 way, shape or form the outcome that whatever  
19 advertising was done I'm assuming they are  
20 advertising that in any way, shape or form that  
21 impacted children. Now how do I -- you know, I can't  
22 see any motive there. They certainly didn't have any  
23 outcome. If they spent a lot of money doing it, they  
24 certainly didn't get anything so I would assume that  
25 whatever advertising was done was not aimed at that

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1 group of people because the children say advertising  
2 -- that peers, family and other persons around them  
3 are the important factors. That's all.

4 I read that correctly?

5 A. Yes. And that's my mistake for not catching the  
6 word that's in there.

7 Q. Now what you believe would be effective in  
8 getting kids to stop smoking would be peer-dominated  
9 education programs; right?

10 MS. TYLER: Objection, misstates his  
11 testimony.

12 Q. Is that right, sir?

13 A. That would be one thing.

14 Q. You know -- The second thing you think is law  
15 enforcement; right?

16 A. That would be a second thing.

17 Q. What are the others?

18 A. Family involvement.

19 Q. What are the others?

20 A. I suspect today probably some relationship with  
21 the church.

22 Q. Anything else?

23 A. A review of research I think limits me at this  
24 point to those major factors.

25 Q. Now you don't have any expertise in law

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1 enforcement, do you?

2 A. No.

3 Q. No?

4 A. No.

5 Q. You have no empirical data or research data to  
6 support your opinions or viewpoints regarding law  
7 enforcement, do you?

8 MS. TYLER: Objection.

9 A. Yes, I do. Yes, there are certainly research  
10 studies that indicate that law enforcement is an  
11 effective means of reducing cigarette consumption by  
12 minors.

13 Q. Have you recited them in your report?

14 A. I don't know.

15 Q. Wouldn't it -- Wouldn't it be important, sir, in  
16 fact one of the opinions that you express in your  
17 report is that law enforcement is the solution to  
18 youth smoking, to have cited something to that  
19 effect?

20 MS. TYLER: Objection. Mr. Manning, you  
21 are misstating his testimony. He didn't say it's not  
22 in there. He is just looking now.

23 MR. MANNING: I understand that.

24 A. The Cummings -- Page 2, Cummings, awareness of  
25 New York State banning sales; Cummings, illegal sale

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1 of cigarettes, begin that process; and Cummings,  
2 where teenagers get their cigarettes.

3 Q. I'm going to write them down here, then. So you  
4 noted two on page 2; is that right?

5 A. This is the beginning process of this genre area  
6 of study, yeah.

7 Q. Okay. Maybe -- I can write them all down, the  
8 ones that you believe. You tell me which articles  
9 you believe support your opinion that greater law  
10 enforcement is the solution to youth smoking.

11 A. I'm going to need to review the articles,  
12 obviously, to make sure that I have, such as  
13 Feighery's article on "The Effects of Combining  
14 Education and Enforcement to Reduce Tobacco Sales to  
15 Minors," Journal of AMA.

16 Q. That's a possible; is that right? I'll  
17 list --

18 MS. TYLER: Objection.

19 Q. -- anything possible, to be fair to you.

20 On page 2 there is 1 and 2, there is the two  
21 Cummings articles you have given me; right?

22 A. Right.

23 Q. What else, on page 3, so I get them all?

24 A. The --

25 Q. Cummings at the top?

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1 A. That's a general background, where they get  
2 their cigarettes, yes.

3 Q. Okay.

4 A. Which introduces the idea of why you would  
5 enforce, you know, legal enforcement.

6 Q. No problem. Then Feighery too. We will err in  
7 your favor. Anything that's possibly touching on  
8 it.

9 A. Davis, R., the "Reducing Youth Access to  
10 Tobacco."

11 Q. Okay. That's five.

12 A. Maybe mention Flay's Waterloo study, maybe.

13 Q. Which one?

14 A. Flay, F-L-A-Y.

15 Q. Are you on page 4 now?

16 A. Yeah. I don't remember if Glynn's study does or  
17 not.

18 The health risk behavior among persons aged  
19 12-21, 1992, may get back to that. I don't remember  
20 without looking at it specifically.

21 Q. Okay.

22 A. Jason's "Active Enforcement of Cigarette Control  
23 Laws and Prevention of Cigarette Sales to Minors."

24 Q. Which one is that?

25 A. Jason.

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1 Q. Jason, got it, thank you.

2 A. Some of these I think only tangentially deliver

3 to an early piece or later piece commenting on it.

4 Keay, K-E-A-Y, on the top of page 6.

5 Q. Got it.

6 A. The effects of retailer intervention.

7 Q. Got it.

8 A. "Laws Ban Minors' Tobacco Purchases, But

9 Enforcement is Another Matter," another JAMA

10 article.

11 Q. Got it.

12 A. Okay. The surgeon general's report of '94,

13 might come back. I'm trying to recall the total --

14 Let's see, I have all these things together.

15 Skretny's article.

16 Q. What's the name?

17 A. S-K-R-E-T-N-Y, "An Intervention to Reduce Sale

18 of Cigarettes to Minors," I don't remember if

19 that --

20 Q. Yup.

21 A. I know the city of New York tried that. I don't

22 remember whether he did or not.

23 Any more global secondary analysis, I don't know

24 that you would include this. I do because it's to

25 inform, the "State Laws Restricting Minors' Access to

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1 Tobacco," by MMWR/Centers for Disease Control, and  
2 they show where differences of enforcement has  
3 impact.  
4 Q. Include it.  
5 A. I think the HIG piece right below that is a full  
6 spectrum --  
7 Q. Okay.  
8 A. -- of some materials.  
9 Thompson's article is a purview overview of the  
10 illegal sales of cigarettes to minors.  
11 Q. Got it.  
12 A. I don't remember what they did in Australia.  
13 They had their -- They are pretty heavy on trying to  
14 do the same restrictive patterns now. That's cross-  
15 culture.  
16 Q. Should we include it?  
17 A. Looking at ways of illegal -- yeah, trying to --  
18 how do you prevent the sale of cigarettes.  
19 The last portion of this is all related to the,  
20 I believe, correct -- I'm sorry if I'm wrong, I  
21 believe for examining how does one assess youth  
22 access to cigarettes and the means by -- thereof all  
23 fall within a general category.  
24 As I said before, it's not my expertise. I'm in  
25 the area of trying to get -- how do you put barriers

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1 up for kids not to smoke cigarettes, buy cigarettes,  
2 buy cigarettes.  
3 Q. All three of these articles on youth access?

4 A. The back part of that, yes, the access of  
5 cigarettes. I think they are reporting on different  
6 access means and ways kids are getting cigarettes  
7 these days.  
8 Q. All right, include all three of them.  
9 A. Uh-huh.  
10 Q. So that's it; right?  
11 A. And of course the last two demonstrate it  
12 probably doesn't work because that's how many kids  
13 smoke, actually.  
14 Q. Do you want to include those two? Happy to.  
15 A. No.  
16 Q. They relate to the topic?  
17 A. No.  
18 Q. All right. So what I did is I counted the  
19 articles that you listed, and I won't repeat each  
20 article but noted a number in my report next to each  
21 one you mentioned, and of course it's mentioned in  
22 the record, and as you said, you have no expertise in  
23 law enforcement; correct?  
24 A. Right, that's not my area of expertise.  
25 Q. You have no experience in law enforcement?

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1 A. No.  
2 Q. You have no training or education in the area?  
3 A. That would be correct.  
4 Q. And the bases for your opinion that there should  
5 be greater law enforcement to prevent kids smoking as  
6 the solution to youth smoking or the prevention of



7 youth smoking, which is in your report, is 19  
8 articles that are listed in the list of articles at  
9 the back of your report.

10 MS. TYLER: Objection.

11 Q. Correct?

12 MS. TYLER: Objection.

13 A. There is certainly a core of material available  
14 indicating that which I have read as research that  
15 indicated that the law enforcement in various states  
16 in the United States has had a very positive impact  
17 in reducing the availability of cigarettes to  
18 adolescents.

19 Q. And that's the basis of your opinion is those 19  
20 articles we just counted for that opinion?

21 MS. TYLER: Objection.

22 Q. Correct?

23 MS. TYLER: Objection.

24 A. In whole or in part or some thereof, those --  
25 those -- certainly those articles, and there are many

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1 more I'm sure.

2 Q. But those many more are not ones that you have  
3 listed in your principal references that are attached  
4 to your report?

5 A. Right. But I think those articles, as best I  
6 can recall those would be articles that will touch on  
7 that topic. It would be articles that I would rely  
8 on to indicate that enforcement by the state,  
9 wouldn't necessarily be a police officer but I think

10 by the state, enforcement of cigarette smoking or  
11 possession thereof has a positive impact on the  
12 reduction of children smoking.  
13 Q. Now you don't have an opinion, do you, about law  
14 enforcement in the state of Minnesota, do you?  
15 A. I have an --  
16 MS. TYLER: Objection.  
17 A. -- opinion about it?  
18 Q. Yeah, do you? Do you have an opinion about it?  
19 A. I think the --  
20 MS. TYLER: Objection, vague.  
21 Q. Your opinion is not about law enforcement in the  
22 state of Minnesota, even though your report is issued  
23 in the state-of-Minnesota case, because you don't  
24 know anything about law enforcement in the state of  
25 Minnesota, do you?

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1 MS. TYLER: Objection.  
2 Q. Do you?  
3 A. I've reviewed that the state's, I think programs  
4 and the tremendous effort that the state of Minnesota  
5 has done or did do for numbers of years as a leader  
6 in the field of enforcement of -- by whatever means  
7 -- I'm not sure what constitutes the means -- the  
8 state by education, the state by intervention, the  
9 state by education, the state by enforced -- trying  
10 to enforce the rules have been -- I think are  
11 recognized as one of the forerunners or one of the

12 most important groups for intervention, programmatic  
13 intervention.  
14 Q. How many times have you been to the state of  
15 Minnesota?  
16 A. Four, five.  
17 Q. Over the last 20 years?  
18 A. Oh, after the -- over the last --  
19 In totality I've probably been through, passed  
20 or by 10 times. I was born in Michigan, used to come  
21 through not-on-an-irregular basis.  
22 Q. How many times have you been here in the last 10  
23 years?  
24 A. Four, five, four.  
25 Q. For what? What did you come for?

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1 A. The CPCRA statistical center for that arm of the  
2 division of AIDS is located at the University of  
3 Minnesota, and have come here for statistical  
4 retreats or the closing of a protocol or present,  
5 three or four times.  
6 Q. So you have not come here to observe law  
7 enforcement in the state?  
8 A. No.  
9 Q. When you came here for your deposition, you are  
10 not here to observe law enforcement in the state?  
11 A. No, sir.  
12 Q. Or make any determinations or conclusions about  
13 it?  
14 A. No, sir.

15 Q. You have never done any study of law enforcement  
16 that the state of Minnesota and the bodies within the  
17 state of Minnesota do or don't do; correct?

18 A. With regard to --

19 MS. TYLER: Objection.

20 Q. What they do or don't do.

21 A. I think I presented the material that I have  
22 examined or the -- what the state has done with  
23 regard to its cigarette-smoking-cessation program  
24 since 1987, which appears in the -- their  
25 documentation.

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1 Q. That's -- Those are things that you reviewed  
2 just recently; correct?

3 A. Yes.

4 Q. Those are materials that were supplied to you by  
5 your lawyers; is that right?

6 MS. TYLER: Objection, objection.

7 A. I asked for them.

8 Q. So those materials, I got a letter from Julia  
9 Tyler and she said this was a supplemental document  
10 index for --

11 A. Right.

12 Q. -- Ed Morse. Is that what you are referring to?

13 A. Yes.

14 MR. MANNING: Let me mark this, please  
15 (Plaintiffs' Deposition Exhibit 4101 was  
16 marked for identification.)

17 BY MR. MANNING:

18 Q. Now sir, you said you asked for these articles  
19 listed on these two pages attached or three pages  
20 attached to 4101?

21 A. Yes. If I could see it.

22 Q. Sure. How did you know to ask for those  
23 materials, did you go through a list of documents and  
24 say these are the ones I want?

25 A. I had known of and I had become aware of

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1 articles in the American Journal of Public Health and  
2 Preventive Medicine, and in talking with Julia, she  
3 made me aware there was other materials that were  
4 available, and I said I would like to see all things  
5 pertinent and available to them and she then sent  
6 these materials and I went back through trying to, as  
7 best I can, examine where and how in doing a search,  
8 and this is a list of materials.

9 Q. A great deal of materials have to do with the  
10 educational programs that the state of Minnesota has  
11 undertaken with respect to the negative effects of  
12 smoking; is that correct?

13 A. Yes.

14 Q. And there is very few articles on there that  
15 deal with the issue of law enforcement; correct?

16 A. That would be correct. I mean, there just --  
17 there is an overarching program that the state of  
18 Minnesota did attempt to do.

19 Q. Did you get all those documents and read them?

20 A. Yes.  
21 Q. You read every one of them?  
22 A. Absolutely.  
23 Q. You read the documents cover to cover?  
24 A. All the documents that are listed here I've  
25 received and read them one by -- page by page by page

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1 by page.  
2 Q. And so what we say about them predominantly  
3 relating to educational efforts is accurate?  
4 A. Yes, that's the predominant thrust of where  
5 their -- their work went.  
6 MS. TYLER: I need to clarify for the  
7 record, Mr. Manning, that the list is -- was provided  
8 to Roberta Walburn. The last item on the list, the  
9 Journal of the American Association, "Protecting  
10 Adolescents from Harm," was not provided to me but I  
11 was informed he would be relying on that so I added  
12 it to the list. Just so the record is clear, I did  
13 provide that article.  
14 MR. MANNING: Thank you.  
15 BY MR. MANNING:  
16 Q. And when you asked your lawyer for these  
17 documents they all, you knew, related to the state of  
18 Minnesota, the plaintiff in this case; right?  
19 MS. TYLER: Objection.  
20 A. I assumed so, yes.  
21 Q. That's what you asked for?

22 A. Yes.

23 Q. And again, at that time when you asked her for  
24 these documents you did know that there were  
25 thousands and thousands of documents that had been

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1 produced by the tobacco industry, you knew that from  
2 reading the Wall Street Journal and New York Times,  
3 didn't you?

4 A. No, I didn't. To be very honest with you, I  
5 didn't. You told me this morning that there was a  
6 repository here of tens of thousands of thousands of  
7 documents and that, to my knowledge, is the first  
8 time that I have learned -- I certainly have my  
9 memory. I'm not saying I didn't know that somewhere  
10 there was an assumption, or even this morning in the  
11 paper, there were thousands of documents or large  
12 numbers of documents, whatever the USA Today  
13 characterized it as, large number of documents, and  
14 they were split into those that could be released and  
15 those that somehow were protected from release. So I  
16 assume there were certainly large numbers of  
17 documents. I did not know that there were excess of,  
18 I think you said in the repository, of millions of  
19 documents in the state of Minnesota.

20 Q. When you asked your lawyer here for these  
21 Minnesota documents and she provided them to you, you  
22 did not ask her or Allen Purvis or anybody else for  
23 one document of one of the tobacco companies, did  
24 you?

25 MS. TYLER: Objection.

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1 A. No.

2 Q. Pardon me? You didn't.

3 A. I did not. Each of these documents is a  
4 document produced by the state of Minnesota or an  
5 individual who has done a study for the state of  
6 Minnesota, and I would assume the state of Minnesota  
7 would be as objective as they basically could be,  
8 they would be direct to the point and their intention  
9 was to build and grow a program that had the  
10 intention of reducing the smoking by -- I would  
11 assume that they would be objective and that a number  
12 of persons doing this material are researchers and  
13 Ph.D.'s, and in fact I think the people that do that  
14 research are -- and report it are Ph.D.'s.

15 Q. You are not suggesting the state of Minnesota  
16 has done anything wrong in their law-enforcement  
17 efforts, are you?

18 A. Absolutely not.

19 Q. In fact you are complementing the state of  
20 Minnesota as being in the forefront and forerunner  
21 with respect to tobacco-prevention issues; correct?

22 MS. TYLER: Objection.

23 A. Absolutely correct, that they have gone before  
24 where others had not -- haven't begun.

25 Q. Haven't dared to tread.

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1 A. I think that's safe to say. It has not been  
2 successful necessarily, but they have tried, and in  
3 trying you learn and you build new programs.

4 Q. Uh-huh.

5 (Discussion off the record.)

6 BY MR. MANNING:

7 Q. Now isn't it true, sir, that you are not aware  
8 of any advertising in your view that is addressed to  
9 adolescents, to your knowledge?

10 A. I --

11 MS. TYLER: Objection.

12 A. Obviously you presented a piece of material that  
13 I didn't read well enough in a transcript prior to  
14 this and the word "advertising" was in there and I  
15 stand the embarrassment to correct it.

16 Yes, I don't believe advertising has an impact  
17 on children from the research that I've done or the  
18 secondary research that I have read.

19 Q. Not my question. Please listen very closely.

20 A. Sorry.

21 Q. You, sir, do not know of any advertising  
22 addressed to adolescents that addressed -- targeted,  
23 addressed to adolescents, to your knowledge, correct,  
24 you are not aware of any?

25 A. No, I'm not aware of any.

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1 Q. You also agree, do you not, that those people,  
2 particularly kids who participate in high-risk  
3 behavior, consistently believe that their risk is  
4 lower than it actually is. That's a characteristic  
5 of high-risk behavior; correct?

6 A. That is a telling characteristic of persons  
7 engaging in high-risk behavior is the underestimation  
8 of the actual risk involved, yes.

9 Q. You also, do you not, believe that advertising,  
10 promotion and marketing of cigarettes does not  
11 influence an adolescent's attitude toward the  
12 product?

13 A. Can you repeat the question, please?

14 Q. You do not believe that advertising, promotion  
15 or marketing of cigarettes can influence an  
16 adolescent's attitude toward the product; correct?

17 A. I have not seen evidence to that effect, no,  
18 scientific evidence to that effect, research that has  
19 been peer reviewed, published and presented.

20 Q. You are not specifically aware of what the state  
21 of Minnesota has done with respect to enacting laws  
22 as well as enforcing laws over a period of time, 10,  
23 15, 20 years, with respect to cigarette smoking, are  
24 you?

25 A. May I ask a point of information or

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1 clarification?  
2 Q. No, sir.

3 MS. TYLER: Objection.

4 Q. You can ask your lawyer, not me. If you want to  
5 ask your lawyer, go ahead.

6 MS. TYLER: Do you want him to rephrase?

7 THE WITNESS: Yes. Could you rephrase?

8 Q. You're not aware what Minnesota has specifically  
9 done with respect to enacting laws as well as  
10 enforcing laws and on and on with respect to tobacco  
11 over the last 15 to 20 years, are you?

12 A. Some portion thereof I would be in that the laws  
13 enacted for the educational programs, the  
14 presentation are all laws, so therefore my answer  
15 would be, within this whole morass, a portion of it,  
16 yes, I am aware by extensive reading.

17 Q. Isn't it true, sir, that you think that tobacco  
18 companies are interested in reducing underage  
19 smoking? You think that, don't you?

20 A. Do I think they are interested in doing it?

21 Q. You believe, do you not, sir, you think and  
22 believe that tobacco companies are interested in  
23 reducing underage, under-18 smoking; correct?

24 A. I think I've heard them say that publicly.

25 Q. And in fact, you believe that they have been so

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1 interested in doing that for a long time; correct?

2 A. I think they have had a program to do that for a  
3 period of time. "Long" would not necessarily fit  
4 relative to the number of years they sold  
5 cigarettes.

6 Q. So, sir, you believe that -- in fact you believe  
7 and you think that tobacco companies are interested  
8 in teenagers not smoking at all; right?

9 A. I think they've expressed opinions of that  
10 publicly, yes.

11 Q. And you have never once in your life spoken to  
12 one individual at one tobacco company; correct?

13 A. To the best of my knowledge, I have not ever  
14 spoken to anyone at a tobacco company or from a  
15 tobacco company, to the best of my knowledge.

16 Q. And if in fact, sir, documents, lots of them,  
17 reflected a studied approach that in fact tobacco  
18 companies are interested, are interested in getting  
19 kids, then that public statement by them would be  
20 untrue that you are aware of; correct?

21 MS. TYLER: Objection.

22 Q. Got the question?

23 A. I'm trying to discern from -- in the  
24 hypothetical versus the realities of what they are  
25 doing versus what is real. Once again, working under

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1 your assumptions and having seen no documents or  
2 having any presentation of any documents, I would  
3 only be dealing with what would be a hypothetical  
4 contradiction.

5 Q. Do you want to hear the question again?

6 A. No, no. I would say there would be a  
7 hypothetical contradiction there.

8 Q. So that would be, if it was not a hypothetical,  
9 if the hypothetical were real, and I understand it's  
10 a hypothetical and you and I are only talking  
11 hypothetical.

12 A. Hypothetical so --

13 Q. But if in fact it were real, then the original  
14 statement that we are not interested in kids, just  
15 even interested, would be a lie.

16 MS. TYLER: Objection.

17 Q. Correct?

18 A. Could be the appearance of a hypothetical  
19 contradiction.

20 MS. TYLER: Do you want to take a break?

21 MR. MANNING: Sure. Any time.

22 (Recess taken from 2:53 to 3:02 p.m.)

23 BY MR. MANNING:

24 Q. Sir, even though you are not an advertising  
25 expert in the general, you would agree that ethics in

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1 advertising, as in any profession, is important;  
2 correct?

3 A. To the -- I-- I assume they have ethics and they  
4 have values and standards.

5 Q. Right. It's always important, isn't it, in  
6 every respect in advertising to tell the truth. You  
7 would agree with that as a general matter as a  
8 citizen?

9 MS. TYLER: Objection.

10 A. No. I assume advertising doesn't deal with the

11 truth.

12 Q. Okay. So you think it's okay if advertising  
13 doesn't tell the truth?

14 MS. TYLER: Objection, misstates his  
15 testimony.

16 A. As stated, I don't believe truth and advertising  
17 have any necessary relationship to each other at all  
18 and I think that's recognized in a court of law and,  
19 if I remember way back when to something called  
20 "puffery of wares," there are limitations and people  
21 are allowed to say they have the best, biggest and  
22 most wonderful. There is some limits within that.  
23 I'm not an attorney, I don't know, but I don't feel,  
24 when I see an ad, I believe it's true, no.

25 Q. Do you believe that implied false messages in

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1 advertising are acceptable?

2 MS. TYLER: Objection.

3 A. Could you give me an example?

4 Q. No. That's my next question to you. Can you  
5 think of, as you sit here right now as a behaviorist  
6 giving opinions about children and the effects of  
7 advertising on children, can you give this jury and  
8 judge an example of an impliedly false ad?

9 A. The ads for diet pills that they are not  
10 harmful, good for you and that you take them, and  
11 they are being removed from the market as fast as  
12 they can get them off the shelves.

13 Q. You think those are impliedly false?

14 A. That's not for me to decide. That's the FDA,  
15 and they decide they are harmful.  
16 Q. Can you give me an example of an impliedly false  
17 ad?  
18 A. That would be when they advertised these are  
19 healthy to use as diet pills, that is false. Ford  
20 Motor Company implies their cars are safe and they  
21 are now recalling 400,000 automobiles. Even I drive  
22 a Ford and I don't like the idea they are implying --  
23 they are a Ford-built car but they didn't all do it  
24 that way. Safe at any speed, Chevrolet Corvair. No,  
25 I don't believe that in advertising, I just don't.

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1 Q. Can you give me an example of impliedly false  
2 ads in the cigarette industry?  
3 MS. TYLER: Objection.  
4 A. I don't think they say much. I don't look at  
5 cigarette ads, but it doesn't strike me, you know --  
6 What is that old one? Something tastes good like  
7 something should, LSMFT, Lucky Strike means fine  
8 tobacco, you know, what does that mean? They are  
9 smooth, they taste good. I don't think they do very  
10 much in advertising.  
11 Q. Do you think those are impliedly false ads?  
12 A. No. I'm saying they are pretty limited, what  
13 they say in cigarette ads.  
14 Q. So you can't think of any impliedly false  
15 cigarette ads as we are sitting here?

16 A. As we are sitting here right this minute, I have  
17 not reviewed them so --  
18 Q. Sir, your -- your report has been marked here,  
19 if I may ask you to refer to it, please.  
20 A. Sure.  
21 Q. I'm going to ask you a few questions about your  
22 report; okay?  
23 A. Uh-huh.  
24 Q. On page 3 of your report, sir, your first  
25 sentence under "SUMMARY OF OPINIONS AND BASIS FOR

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1 OPINIONS," what is your definition of primary and  
2 secondary research? What's the difference between  
3 "primary" and "secondary" in your mind?  
4 A. Secondary research would normally rely on  
5 research that has been processed, previously analyzed  
6 for specific purposes and you are now going on to use  
7 it for possibly an alternative purpose.  
8 Q. Going down there on the bottom of the page,  
9 second-to-the-last line you say -- it says, "He also  
10 bases his opinion upon his review of the relevant  
11 sworn testimony in this case, advertisements...."  
12 What relevant sworn testimony have you reviewed in  
13 this case?  
14 A. I'm referring there to the Minnesota Medicaid  
15 cases, the depositions that were taken of persons --  
16 Q. Uh-huh.  
17 A. -- with regard to their backgrounds, histories,  
18 specifically with regard to when they smoked.



19 Q. Which ones did you read?  
20 A. Woo.  
21 Q. Are they listed anywhere?  
22 A. They are not listed in this document.  
23 Q. Why aren't they listed?  
24 Who wrote that sentence? Did you write the  
25 sentence where you are describing yourself in the

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1 third person?  
2 A. Yes, I wrote those, but I did not record --  
3 Q. Who determined what portions of the testimony  
4 was relevant, somebody send you -- somebody send you  
5 Medicaid depositions? Did you read them?  
6 A. Yes.  
7 Q. Somebody sent them to you? Julia sent them to  
8 you?  
9 A. Uh-huh, yes.  
10 Q. How many did she send you?  
11 A. Boxes.  
12 Q. How many did you read?  
13 A. All of them.  
14 Q. None of them are cited in your report.  
15 A. Well I use them as activity. They are part and  
16 parcel of when we talked before about how do I know  
17 about this and other type of data, how do I know when  
18 a person started smoking, why did they start smoking,  
19 why their continuation and behavior patterns are all  
20 taken and distilled. This is another source of  
21 data. They didn't mention in those cases

22 advertising, they didn't mention -- they mentioned  
23 the facts of family and peers.  
24 Q. But I don't know what you read, do I --  
25 A. No, sir.

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1 Q. -- as a basis for your opinion? It does not  
2 tell me what you read, does it, other than this  
3 phrase "relevant sworn testimony"; right?  
4 A. That's correct, sir.  
5 Q. What advertisements, in the next, did you look  
6 at?  
7 A. Only advertisements as related to currently what  
8 are being advertised as cigarettes.  
9 Q. Where? Who gave you those? Step out in the  
10 street?  
11 A. Nobody. Just public, me being a person, as you  
12 said, just as a human being.  
13 Q. Did you see the new Winston ad campaign?  
14 A. I've seen some of it, I don't know if I've seen  
15 all of it. I've seen some of it.  
16 Q. Do you see the billboards that say "naked"?  
17 A. Does it say "naked" or "natural"? I'm sorry.  
18 Probably says "naked." I'll take your word for it.  
19 Q. You tell me. I don't know.  
20 A. I still am staying with the other one that has  
21 some little pullout tab and I can't understand that  
22 one yet. It's quite confusing to me.  
23 Q. What has a pullout tab?

24 A. There is something about a cigarette pack, I  
25 think it's a new cigarette pack of some sort. May

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1 not be. Just looking at the ad, I look at the new  
2 Winston ad.

3 Q. Are you familiar with the new Winston campaign,  
4 big sign that says "naked," and other signs that say  
5 "no additives," "all natural"?

6 A. "All natural," I think I've seen something  
7 "natural." I don't think I've seen anything that  
8 said "naked." I think I saw something that said  
9 "natural."

10 Q. Do you see all of them say "no bull," "no bull,"  
11 whether they said "naked" or whether they say --  
12 don't say "naked" and they say something else like  
13 "no additives," they all have a little red circle  
14 that says "no bull"?

15 A. Yeah, yeah.

16 Q. Have you seen that?

17 A. Yeah.

18 Q. Who do you think that's designed to appeal to?

19 A. Boy, I do not know.

20 Q. Don't know. You didn't ask to talk to the ad  
21 agency that designed those ads, for example?

22 A. No, sir. I just looked at it as seeing a new  
23 direction in the ads.

24 Q. Going on, you say here on page 4 at the top,  
25 "will rely on the work and opinions of other experts

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1 in this case."  
2 A. Could I --  
3 Q. What's wrong?  
4 A. Advertisements, the Joe Camel advertisements  
5 have disappeared.  
6 Q. Yeah.  
7 A. Now they have new Camel ads out, similar, but I  
8 don't know who they are advertising to or what they  
9 are advertising to.  
10 Q. Page 4 there, if you will, "Dr. Morse will rely  
11 on the work and opinions of other experts in this  
12 case." What other experts?  
13 A. As I indicated, there is an expert of -- did a  
14 survey that was sent to me with regard to adolescents  
15 and who --  
16 Q. Anybody other than that? That's the guy whose  
17 name begins with an S; right?  
18 A. Right.  
19 Q. Anybody else?  
20 A. Did I rely on anybody else, currently experts?  
21 Another expert in Texas sent me a piece of material  
22 from the newspaper in his city the other day about  
23 problems with enforcement of cigarette law, an  
24 expert. I didn't solicit it from him. He just  
25 called me and sent it to me.

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- 1 Q. Anything else on other experts?
- 2 A. At this moment I don't recall. If I remember
- 3 someone, I will come back and chime in.
- 4 Q. Now let's go back here, down a little further.
- 5 You see in the middle of that paragraph on page 4 you
- 6 say -- this sentence right here, may help if I point
- 7 for you.
- 8 A. Okay.
- 9 Q. Says, During adolescence, --
- 10 A. Uh-huh.
- 11 Q. -- as a group adolescents are likely to engage
- 12 in unsafe marital -- premarital sex, drive over the
- 13 posted speed limit, not use seat belts, experiment
- 14 with non-prescription street drugs and alcohol, smoke
- 15 cigarettes, operate equipment without appropriate
- 16 head safety wear, carry firearms, fight in school,
- 17 disregard proper nutritional uptake and appropriate
- 18 daily exercise; right?
- 19 MS. TYLER: Objection. I think it's
- 20 "intake," not "uptake."
- 21 MR. MANNING: Thanks.
- 22 Q. Now if we go over to page 5, you say further --
- 23 A. Where are you, please?
- 24 Q. Top.
- 25 A. Okay.

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- 1 Q. "Further, he will testify that as persons pass
- 2 through the adolescent stage of development, the

3 majority greatly reduce or eliminate many high-risk  
4 behavior patterns"; correct?

5 A. Yes.

6 Q. At least you will agree with me that of all  
7 those high-risk behavior patterns that you identify  
8 over on page number 4, --

9 A. Uh-huh, uh-huh.

10 Q. -- none of them have the potential for addiction  
11 the way cigarettes do; correct?

12 MS. TYLER: Objection.

13 Q. You understand that? I know you are not an  
14 addictionist and you are not saying cigarettes are  
15 addicting, you've said all that and I understand  
16 that, but none of those other behaviors listed there  
17 have the potential for addiction the way in which  
18 cigarettes do; correct?

19 A. I have no professional opinion whatsoever, but  
20 as a non-professional opinion, street drugs and  
21 alcohol have very high, seem to be historically very  
22 heavily addicting in some populations of persons.

23 Q. Sure.

24 A. The degree to which cigarette smoking is more  
25 addictive to alcohol, which is more addictive to

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1 methamphetamine, which is more addictive to crack,  
2 which might be more addictive to heroin, would be  
3 more addictive to anything in comparison would be  
4 ludicrous for me to make a comparison to say

5 cigarette smoking was more addictive than those  
6 substances, so I would respectfully disagree with  
7 your statement.

8 Q. Now on page 5 you've indicated that, down here,  
9 after the first paragraph, fourth line down it says,  
10 "He will also testify that there is," quote, "no  
11 credible social science research that demonstrates  
12 that adolescents' exposure to commercial marketing,  
13 advertising, promotions or sponsorships of any  
14 cigarette company has any impact on the behavior  
15 patterns of those who choose to start smoking";  
16 right?

17 A. I believe I would stand by that, yes.

18 Q. And that is a very strong statement, you would  
19 agree?

20 A. I have not had -- in my years of search had any  
21 experience, have research that would, peer reviewed,  
22 credible research that would -- I believe is going to  
23 -- would contradict that.

24 Q. Okay. Not one ounce of any credible scientific  
25 research; correct?

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1 A. I don't think there is any. At this moment I'm  
2 racking my brain, I'm not sure I would grab one that  
3 would say that advertising had a credible -- credible  
4 impact on promoting cig -- any smoking, starting  
5 smoking.

6 Q. Let me just ask you, then, about a few; okay?

7 Have you read the article, and of course you are

8 welcome to look at your report and look at your  
9 bibliography, have you reviewed the article "Tobacco  
10 Advertising and Consumption: Evidence of a Causal  
11 Relationship," Journal of Public Health and Policy,  
12 Volume 8, winter of 1987, by Pierce, J. P., et al?  
13 A. I would be happy to review the article with you.  
14 Q. Have you reviewed the article?  
15 A. I have in the past. I'd be happy to review the  
16 article with you now.  
17 Q. You have reviewed it in the past?  
18 A. In the past.  
19 Q. Is it listed in your CV as an article that you  
20 relied on?  
21 MS. TYLER: Meaning is in the principal  
22 list of references?  
23 MR. MANNING: Yes.  
24 A. I don't believe so, no.  
25 Q. Do you ever --

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1 A. Wait, please, I'm --  
2 Q. Yeah, sure.  
3 A. I have to --  
4 No, I did not.  
5 Q. Have you reviewed "Tobacco Use in California, An  
6 Evaluation of the Tobacco Control Program,  
7 1989-1993," a report to the California Department of  
8 Health Services, University of California San Diego?  
9 A. By whom?



10 Q. Have you reviewed that?

11 A. Could you restate the title, please?

12 Q. "Tobacco Use in California, An Evaluation of the  
13 Tobacco Control Program....," a report to the  
14 California Department of Health Services, University  
15 of California, San Diego. Have you reviewed that  
16 article?

17 MS. TYLER: Do you have a year?

18 MR. MANNING: 1994.

19 MS. TYLER: Do you have an author?

20 MR. MANNING: No.

21 Q. That article is not listed in your report, is  
22 it, sir?

23 A. I am only on page 2. I'll look through. I'm  
24 trying to find out whether it is or is not.  
25 Could you reread your title, please?

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1 Q. Sure. "Tobacco Use in California, An Evaluation  
2 of the Tobacco Control Program...."

3 A. I do not present the article as a piece of  
4 material that I would rely on in this report and I do  
5 not recall or remember at this moment whether I have  
6 read or have not read the article itself.

7 Q. Do you disagree with the statement many studies  
8 have shown that young people are aware of, respond  
9 favorably to and are influenced by cigarette  
10 advertising?

11 MS. TYLER: Are you reading that from a  
12 document, Mr. Manning?

13 Q. Do you disagree with the statement, sir, did you  
14 agree with the --

15 MR. MANNING: Don't interrupt me and ask me  
16 where my questions come from.

17 MS. TYLER: You are referring to a  
18 document, you are reading specifically from a  
19 document.

20 MR. MANNING: I am -- I can look at any  
21 notes, underlining in anything that I want, counsel,  
22 so don't be so rude as to interrupt me again.

23 MS. TYLER: I'm not being rude, I'm  
24 asserting objections, and I'm entitled to do it.

25 MR. MANNING: You are being very rude.

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1 State them. Don't interrupt me and ask me questions.  
2 State your objection.

3 Q. Did you disagree with the statement, sir, that  
4 many studies have shown that people are aware of,  
5 respond favorably to and are influenced by cigarette  
6 advertising?

7 A. I don't know of what the context of that  
8 material is so --

9 Q. Do you disagree with the statement?

10 A. I don't know what the articles are, I don't know  
11 where they are coming from. Are they -- Are they by  
12 the cigarette industry? Are they by others?

13 Q. Well --

14 A. Who are they by? The material I have read would  
15 not confirm that that was a truth. Now someone else

16 may produce some other set of literature from another  
17 area of work, an advertisement or whatever that I  
18 don't read that may assert something, but I have not  
19 read that so I would not agree to that.

20 Q. Right. And in fact the statements you have made  
21 here and submitted a report to a court of law, which  
22 I presume you -- you know this is submitted to a  
23 court; correct?

24 A. Yes.

25 Q. You have made a statement that there is -- that

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1 you will also testify, you told me you wrote this, --

2 A. I did write this.

3 Q. -- that there is "no credible social science  
4 research that demonstrates that adolescents' exposure  
5 to commercial marketing, advertising, promotions or  
6 sponsorships of any cigarette company, has any impact  
7 on the behavior patterns of those who choose to start  
8 smoking." Now we agreed that's a strong statement;  
9 correct?

10 A. "Any impact" is where? I'm trying to --

11 Q. I just read the sentence.

12 A. I know, I'm just trying to find where I say, do  
13 not account for any patterns of smoking.

14 Q. Just read the sentence that begins with "He will  
15 also testify."

16 A. "He will also testify that there is not credible  
17 social science research that demonstrates that  
18 adolescents' exposure to commercial marketing,

19 advertising, promotions or sponsorships of any  
20 cigarette company has any impact on the behavior  
21 patterns of those who choose to start smoking," and I  
22 would stand by that in my field and my area as best I  
23 can report to the court, and I'm sure they are not  
24 going to let me report on anything outside my area of  
25 expertise.

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1 Q. You would disagree with the statement that many  
2 studies have shown that young people are aware of,  
3 respond favorably to and are influenced by cigarette  
4 advertising; right?

5 MS. TYLER: Objection.

6 Q. You disagree with that statement?

7 MS. TYLER: Objection. Your sentence  
8 refers to studies, and he has asked you what the  
9 studies are.

10 Q. You would disagree with that statement?

11 MS. TYLER: He doesn't know what the  
12 statement is about.

13 A. I don't know what the statement is, I don't know  
14 what they said.

15 Q. I'm making the statement --

16 When you say there is not one ounce of credible  
17 research out there, what you are talking about is  
18 studies; correct?

19 A. Uh-huh. You want me to disagree. I have to see  
20 the studies to know if I would disagree, to examine  
21 them, and you said somebody else says there are

22 studies. Well I have to see what the studies are.  
23 If the studies are there and they are credible  
24 studies and they are research in the area of  
25 behavioral -- high-risk behavioral patterns that I'm

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1 attuned to, then I would take a look at them.

2 Q. Then you might -- Then you might withdraw your  
3 statement?

4 MS. TYLER: Objection.

5 Q. Correct? Is that what you said?

6 A. No, I didn't say that. I said I would like to  
7 look at them before I can examine and evaluate a  
8 response to you because you want me to answer yes or  
9 no to your statement. I haven't seen the documents  
10 that indicate that there are studies that are  
11 contra-positive to what I have written here.

12 Q. And I've just indicated to you two studies at  
13 least that are not in your report, haven't I?

14 A. But you have not presented those studies to me.

15 Q. I haven't.

16 A. So I have no idea whether you -- they are in  
17 fact existing studies.

18 Q. I understand, sir, but you don't have those  
19 studies in your report; right?

20 A. Right.

21 Q. And you don't remember reading those studies as  
22 the expert; right?

23 MS. TYLER: Objection, misstates his

24 testimony.

25 Q. You don't remember reading them, do you?

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1 MS. TYLER: Objection.

2 MR. MANNING: Fine, object.

3 Q. Do you remember reading them?

4 A. I do not recall at this time whether I read them  
5 or not. I did not include them in my statement.

6 Q. All right. Do you recall reading a study called  
7 "Teen-age Attitudes and Behavior Concerning Tobacco  
8 - Report of the Findings," The George H. Gallup  
9 International Institute, Princeton, New Jersey,  
10 September 1992?

11 A. Do you have a copy of the report?

12 Q. No. I'm asking you if you are familiar with  
13 that study. Is it in your report? If it isn't in  
14 your report, then are you familiar with it? That's  
15 all I'm asking you, those two questions.

16 MS. TYLER: Objection.

17 A. I don't believe the Gallup study is referred to  
18 in this set of materials.

19 Q. And you don't recall reading it; is that right?

20 A. And I -- Well there is the Gallup organization,  
21 but he is not telling me which report it is.

22 Q. I am telling you which report, "Teen-age  
23 Attitudes Concerning Tobacco - Report of the  
24 Findings," The George H. Gallup International  
25 Institute, Princeton, New Jersey, September 1992. I

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1 told you what it was. Is that in your report?

2 A. Wait a second. I'm trying to find it.

3 Q. Is there a reason this is taking so long?

4 MS. TYLER: Objection.

5 MR. MANNING: I'm just asking a question.

6 Don't jump, I'm asking if there is a reason.

7 MS. TYLER: He is reading the document.

8 A. I'm trying to find -- There are two Gallup poll  
9 pieces in my material, both produced by Larsen. If  
10 those are the ones referred to on "Smoking Prevalence  
11 and Attitudes Towards Smoking Among Adolescents" and  
12 "Smoking Prevalence, Beliefs and Activities by  
13 Gender and Other Demographic Indicators," 1993 and  
14 1994. Now those are the only two I've found at this  
15 moment.

16 Q. Okay. I see those.

17 A. Okay.

18 Q. That's not what I read. I'm trying to  
19 understand what --

20 A. To the best of my recollection, the only two  
21 pieces of Gallup material for this report were the  
22 two Larsen pieces so indicated.

23 Q. So you have not to your knowledge read something  
24 called "Teen-age Attitudes and Behavior Concerning  
25 Tobacco - Report of the Findings," the George H.

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1 Gallup International Institute, 1992?

2 MS. TYLER: Objection.

3 Q. You have not read that, to your knowledge?

4 MS. TYLER: Objection.

5 A. No, sir, I did not -- I don't remember right  
6 this minute. The two pieces I reported to you were  
7 these two pieces. Gallup material is rather wide,  
8 large and extensive.

9 Q. Most of your stuff is listed by author, so if I  
10 give you the author we can get to it quicker?

11 A. Yes, sir.

12 Q. Okay. I'll try that. Have you, sir, read an  
13 article by J. P. Pierce? I'll give to you the  
14 title. Do you want to go to it? You can find the  
15 Pierce?

16 MS. TYLER: Are you implying everything he  
17 has read is listed on his principal list of  
18 references?

19 MR. MANNING: If you want to ask him  
20 questions, you go ahead. Do you want to ask him a  
21 few?

22 MS. TYLER: I'm trying to clarify.

23 MR. MANNING: Just wait until my 12 hours  
24 are done and you can ask him.

25 MS. TYLER: I'm trying to clarify the

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1 record.

2 Q. You can go by author. Would you go to your



3 report now and help me? Have you read an article by  
4 J. P. Pierce?  
5 A. We have already established that in -- there is  
6 nothing by J. P. Pierce, I don't believe, in here so  
7 -- But have I read articles by Pierce? Yes, I read  
8 most of what he's published.  
9 Q. Have you read an article that he wrote called  
10 "Does Tobacco Advertising Target Young People to  
11 Start Smoking? Evidence from California," Journal of  
12 the American Medical Association, 1991, have you read  
13 that article?  
14 A. I believe so.  
15 Q. So that would be one that you would reject as  
16 having any ounce of evidence in your statement here,  
17 in your report that would in any way, shape or form,  
18 as you've stated -- I'll quote you -- would not be  
19 any credible social science research on the topic of  
20 marketing or advertising impacting kids; correct?  
21 MS. TYLER: Objection.  
22 Q. Right?  
23 A. Yes.  
24 Q. Right?  
25 A. That would be correct.

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1 Q. Have you read an article by Chapman, S. Chapman  
2 and B. Fitzgerald? Can you identify that one?  
3 A. It is not a part of my report. Go ahead, what's  
4 the title?  
5 Q. I'll give you the title. Do you recall reading

6 an article by S. Chapman and B. Fitzgerald titled  
7 "Brand Preference and Advertising Recall in  
8 Adolescent Smokers: Some Implications for Health  
9 Promotion," American Journal of Public Health, do you  
10 recall reading that?

11 A. The year, the date, the time, the volume,  
12 anything?

13 Q. 1982.

14 MS. TYLER: Mr. Manning, I object, at  
15 this --

16 Q. Do you recall?

17 MS. TYLER: Let me finish my objection.

18 MR. MANNING: Go ahead.

19 MS. TYLER: I object at this time to your  
20 continual reference to documents that have not been  
21 predesignated in this deposition for use in  
22 questioning Professor Morse. You have not identified  
23 the documents, you have not shown him the studies,  
24 and you are specifically asking him whether he  
25 accepts or rejects what you refuse to show him, and

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1 you refused to give me any notice that you are going  
2 to refer to them.

3 MR. MANNING: You are not listening to the  
4 question.

5 MS. TYLER: I have listened to the  
6 question. You are asking if he read them and if he  
7 rejects them, and I object to this line of

8 questioning, I move to strike it as it has continued  
9 and I object to any further questions on this topic.  
10 MR. MANNING: Go ahead. It's noted.  
11 Q. Do you recall the article? Do you want me to  
12 say it again?  
13 A. You may, but I -- I'm not sure that that's going  
14 to refresh my specific memory of that specific  
15 article.  
16 Q. You may have read it, you may have not. On this  
17 one, then, you don't recall whether you read it?  
18 A. I may have read it or may not have read it, I  
19 don't know.  
20 Q. The prior one, for example, you recall that you  
21 read it, the Pierce?  
22 A. I said I believe I have read it and it's very  
23 likely -- I know -- and I probably read that article,  
24 but I can't guaranty you that I have. I would like  
25 to see that if you are going to ask me questions

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1 about it, whether I accept it or reject it.  
2 Q. I'm asking whether you recall --  
3 A. I don't remember.  
4 Q. -- reading it.  
5 A. Do not recall.  
6 Q. Thank you. Next article I'm going to ask you  
7 about, Aitken, P. P. Aitken and D. R. Eadie,  
8 E-A-D-I-E, are the authors of "Reinforcing Effects of  
9 Cigarette Advertising on Under-Age Smoking," the  
10 British Journal of Addiction, 1990. Is that in your

11 report?

12 A. That is not in my report and I do not recall  
13 whether I read that or not.

14 Q. No recollection?

15 A. I do not recall.

16 Q. I understand. So you can't say I read it and  
17 you can't say I didn't read it, you just don't know?

18 A. I don't recall.

19 MS. TYLER: I object.

20 Q. So if --

21 So on that article you can't say, as an example,  
22 because you don't remember whether you read it or  
23 didn't read it, that there is no evidence in it to  
24 support the idea that marketing may impact kids  
25 because you don't know. You would need to read it,

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1 somebody would need to find it and give it to you and  
2 you need to evaluate it to see whether it fits under  
3 your general opinion; correct?

4 MS. TYLER: Objection.

5 Q. Is that right, sir?

6 A. I'd have to refresh my examination of the  
7 material.

8 Q. Right. Let me ask you about this one. How  
9 about Goldstein, A. O. Goldstein, et al, see if  
10 that's in your report. It's called a "Relationship  
11 Between High School Student Smoking and Recognition  
12 of Cigarette Advertisements," in the Journal of  
13 Pediatrics, 1987. Is that in your report?

14 A. No, it's not.

15 Q. Do you recall reading that one?

16 MS. TYLER: Objection.

17 Q. Do you?

18 A. I would imagine I probably read that.

19 Q. So that one, then, would be included within your  
20 statement on page 5 of your opinion there is no  
21 credible social science research that demonstrates --

22 MS. TYLER: I strenuously object. Now you  
23 are asking him whether or not a study which he says  
24 he is not sure he even -- said he read or not --

25 MR. MANNING: Listen, come on, don't get

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1 into this; okay? If he says he is not sure, then I'm  
2 being very fair to him. He doesn't know. If he says  
3 he has read it --

4 MS. TYLER: He said he wasn't sure but he  
5 thinks he probably read it, and we can -- we can ask  
6 the court reporter to read it back.

7 MR. MANNING: I'll ask him again. Let's be  
8 fair to him.

9 Q. Do you recall reading -- What I recollected, you  
10 probably read it. You tell me. The study is A. O.  
11 Goldstein, et al, "Relationship Between High School  
12 Student Smoking and Recognition of Cigarette  
13 Advertisements," Journal of Pediatrics, 1987. Did  
14 you probably read it or not, do you recall?

15 A. May or may not have.

16 Q. Don't know?  
17 A. I don't recall.  
18 Q. So you don't know whether it would be included  
19 within your statement. In other words, there might  
20 be something in there to say and in fact advertising  
21 does impact kids, and if there is something in there  
22 that says that then you would have to amend your  
23 report that says there is no credible social science  
24 research, if there was?  
25 MS. TYLER: I object to your asking this

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1 witness any questions or asking him to draw any  
2 conclusions based on studies he has repeatedly asked  
3 to see and you refuse to show him.  
4 MR. MANNING: Thank you.  
5 Q. Correct? Do you understand the question?  
6 A. I -- I don't recall the specifics of the  
7 article, of whether I read it or didn't read it  
8 within the last -- any period of time, and until same  
9 I'm not able to comment to you on it.  
10 Q. But if you had read it, if you got it, okay, and  
11 you read it then it would fall within your opinion it  
12 has nothing -- no credible --  
13 A. I don't know that.  
14 MS. TYLER: Objection.  
15 A. I don't remember.  
16 Q. This is my point, then. When you make a  
17 statement to this court that there is no credible  
18 social science research that demonstrates that

19 marketing has any impact on kids, then the only thing  
20 you can be sure of that you are making that statement  
21 about no credible social science research, the only  
22 thing you are making a representation to this court  
23 about is in fact the articles that are cited in your  
24 report.

25 MS. TYLER: I object.

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1 Q. Correct?

2 A. No.

3 Q. Then you have a problem, then you have a real  
4 problem with your position because you got a little  
5 logical inconsistency there.

6 Now so what you are saying is when you make the  
7 statement there is no credible social science  
8 research, you are making the statement there is no --  
9 that there is no such credible social science  
10 research in this world that you --

11 A. From my --

12 Q. -- have read?

13 A. From my perspective I consider credible.

14 Q. And that you have read.

15 A. And that I've read, that I've pulled together  
16 and thought about and remember and examine as a human  
17 being, yes.

18 Q. So your opinion is not limited to the materials  
19 that are cited here; correct? It includes more  
20 materials than what you cited?

21 A. In my general life gestalt, as a scientist for  
22 30 years, at which at some point one doesn't remember  
23 the name of an article --

24 Q. Right.

25 A. -- or where it is and what it is, but the

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1 general pattern is that there is not the effect, and  
2 that's why I write that I do not remember, nor do I  
3 present you the articles and history that says what's  
4 current and what has a general effect.

5 Q. Right.

6 A. I'm not trying to lie; I'm trying to present a  
7 presentation of my gestalt on what the field is.

8 Q. And you see, when you testify in a court of law  
9 about your gestalt, I have to ask you about your  
10 gestalt.

11 A. Sure.

12 Q. You see?

13 A. Absolutely.

14 Q. Good. That's what we are doing now. Let's  
15 continue.

16 On your opinion gestalt -- okay? -- I want to  
17 ask you about an article again, see if this is on  
18 your list, G. J. Botvin, et al, smoking -- See if  
19 that one's in there, please.

20 MS. TYLER: Objection. Are you going to  
21 finish the title?

22 MR. MANNING: Yes, I am. Quit interrupting  
23 me.



24 Q. Is that in there?

25 A. No.

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1 Q. So you have not read an article -- Hold on. I  
2 understand. I misstated. Don't jump. You have to  
3 at least --

4 This article by Botvin is not cited in your  
5 report; right?

6 A. Correct.

7 Q. For the record, now I'm going to give you the  
8 name of it to see if you recall reading it or not.  
9 Doesn't mean you didn't read it, may have, if you  
10 recall it. Let's find out if you do. G. J. Botvin,  
11 Smoking Behavior of Adolescents Exposed to Cigarette  
12 Advertising, Public Health Reports, 1993, do you  
13 recall reading that one?

14 MS. TYLER: I object to your asking this  
15 witness about documents that have not been  
16 predesignated.

17 MR. MANNING: Thank you.

18 A. I don't recall whether I read that or not.

19 Q. Don't know either way?

20 A. Don't know either way.

21 Q. Ask you a document, see if this one is attached,  
22 by Klitzner, K-L-I-T-Z-N-E-R, Gruenewald,  
23 G-R-U-E-N-E-W-A-L-D, and Bamberger,  
24 B-A-M-B-E-R-G-E-R. Right? Any of those in there?  
25 A. Those are three different persons or those --

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1 Q. Those are all three different persons, there is

2 a Klitzner --

3 A. Slow down. Okay, Klitzner. Go ahead. Next?

4 Q. Gruenewald and Bamberger.

5 A. To the best of my observation at this moment,

6 those would not be articles that are in here,

7 referred to.

8 Q. These authors are not in your report?

9 A. Right.

10 Q. Now these same three authors, this is the title

11 of the document, see if this refreshes your

12 recollection as to whether you read it: "Cigarette

13 Advertising and Adolescent Experimentation with

14 Smoking," British Journal of Addiction, 1991, does

15 that refresh your recollection that you read it?

16 MS. TYLER: I object.

17 A. I don't remember whether I've read it or not.

18 Q. Just don't know. How about an article by

19 Aitken, P.P., et al, is he in your report?

20 A. No.

21 Q. Pardon me?

22 A. No.

23 Q. No articles by Aitken?

24 A. Previously you gave one article, we went through

25 that, but you didn't go to the other articles.

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1 Q. I'm not sure what you are talking about.

2 MS. TYLER: I think this was three authors  
3 of the same article.

4 Q. Three authors of the same article.

5 A. Oh, that's what I asked you, whether those are  
6 three authors of the same article. Okay. Confused.  
7 Fine.

8 Q. Aitken here is not in your report. Let me give  
9 you this title and see if you recall reading this one  
10 by Aitken.

11 Are you familiar with Aitken as an author as you  
12 were with Pierce?

13 A. Go ahead.

14 Q. That was a question.

15 A. I don't know what Aitken it is yet.

16 Q. P. P. Aitken, A-I-T-K-E-N. Are you familiar  
17 with Aitken in the same way you were familiar with  
18 Pierce?

19 A. Possibly.

20 Q. The title of his article is: "Predisposing  
21 Effects of Cigarette Advertising on Children's  
22 Intentions to Smoke When Older," British Journal of  
23 Addiction, 1991.

24 MS. TYLER: I object to you asking this  
25 witness about documents that are not predesignated.

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1 MR. MANNING: That's fine.

2 A. You are going to have to wait for a moment while  
3 I reassess my total documentation, all the material  
4 here, and I'll be right with you.  
5 Q. Sure, go right ahead.  
6 A. You are hitting a --  
7 Q. Why don't we just go to A and see whether it's  
8 there?  
9 What are you looking for, sir? Tell me so I  
10 know what we are doing.  
11 A. Yes. The articles, I believe the majority of  
12 which you are examining, are from outside this  
13 culture. You are examining British literature, and  
14 that's over and over and over again. The British  
15 literature may or may not have any reflection,  
16 particularly as I pointed out with the Australian  
17 literature, it may or may not have cross-cultural  
18 differences at any one point in time in the cyclical  
19 factors of how people are engaging in --  
20 Q. I understand.  
21 A. -- tobacco behavior, so I'm not sure for this  
22 document they would address specifically anyway the  
23 issue here, credibility of advertising, but that's  
24 not necessarily true.  
25 Q. What are you looking for?

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1 A. I was just looking for if I had given you a  
2 reason to look for other journals. You are looking  
3 at the British Journal of Addiction, you are looking  
4 at this's and that's.

5 Q. I'm trying to go through a list and see if you  
6 recall reading this or not.  
7 A. And I'm just saying I don't remember.  
8 Q. Okay. Let me ask you another one; okay?  
9 A. Sure.  
10 Q. How about O'Connell, O comma C-O-N-N-E-L-L,  
11 D. L.?  
12 A. Excuse me? O'Connell?  
13 Q. O'Connell, is that in your report?  
14 A. No.  
15 Q. Do you recall reading this article --  
16 MR. MANNING: I understand you have a  
17 continuing objection, counsel, I understand the  
18 objection.  
19 Q. "Cigarette and Drug Use in Schoolchildren, II,  
20 Factors Associated with Smoking," International  
21 Journal of Epidemiology, 1981 and 1994, citing  
22 Alexander, H. M., et al, "Cigarette Smoking and Drug  
23 Use in Schoolchildren," ever heard of that one?  
24 MS. TYLER: Objection.  
25 A. I don't recall having read it but we are going

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1 now back some 18 years, 17, 16 years so I would  
2 certainly not want to say I haven't. I just don't --  
3 I don't recall.  
4 Q. Do you read the International Journal of  
5 Epidemiology?  
6 A. If it has an article of interest to me in it, I  
7 certainly read it.

8 Q. Does it come across your desk? Do you get a  
9 copy of what's in it whatever it is, quarterly?  
10 A. I'm sorry?  
11 Q. Does it come across your desk?  
12 A. The journal?  
13 Q. Yes, or an index sheet that tells you what's in  
14 it?  
15 A. No, sir. We don't read journals that way any  
16 longer. That would be very archaic. The articles  
17 you pull up on search lines.  
18 Q. Now are you familiar with an author named  
19 Chassin, C-H-A-S-S-I-N, L., is he cited in your  
20 report, or she?  
21 A. And the article you are referring to?  
22 Q. Well he is cited in your report, is he not?  
23 A. "Self-images and Cigarette Smoking in  
24 Adolescence," is that the article you are referring  
25 to?

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1 Q. No.  
2 A. Personality and Social Psychology Bulletin,  
3 December 1981.  
4 Q. No, that's not the one I'm referring to.  
5 A. Go to it, then.  
6 Q. Do you know Chassin?  
7 A. I used one article of Chassin's in here.  
8 Q. I understand. And I'm wondering if you have  
9 read all of Chassin like you have Pierce.

10 A. I don't recall whether I've read all of  
11 Chassin's work or not.

12 Q. See if you recall this one by Chassin:  
13 "Predicting the Onset of Cigarette Smoking on  
14 Adolescents: A Longitudinal Study," Journal of  
15 Applied Social Psychology, 1984, do you recall  
16 reading that one?

17 A. I don't.

18 MS. TYLER: Objection.

19 Q. No?

20 A. I don't recall.

21 Q. How about Collins, M. L.?

22 A. It does not appear in the report.

23 Q. See if you recall this title, reading this one:  
24 "Psychosocial Predictors of Young Adolescent  
25 Cigarette Smoking: A Sixteen-Month, Three-Wave,

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1 Longitudinal Study," Journal of Applied Social  
2 Psychology, 1987.

3 MS. TYLER: Objection.

4 Q. Did you read that one?

5 A. I don't recall.

6 Q. How about Sussman, have you cited Sussman in  
7 here?

8 A. Let me check. If you are pronouncing it S-U-M,  
9 no -- S-U-S, no.

10 Q. How about this title, see if you recall reading  
11 this one.

12 A. Do you have the article?

13 Q. Yeah. I'm going to read it to you, the title.  
14 "Adolescent Nonsmokers, Triers and Regular Smokers'  
15 Estimates of Cigarette Smoking Prevalence: When Do  
16 Overestimations Occur and by Whom?" Journal of  
17 Applied Social Psychology, 1988, did you read that  
18 one?

19 MS. TYLER: Objection.

20 A. By whom?

21 Q. Sussman.

22 A. Sussman?

23 Q. Yeah.

24 A. I don't recall.

25 Q. So it's possible --

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1 A. Could I just -- If I'm not breaking, could I  
2 take 30 seconds to go down to the end of the room and  
3 get a drink of water?

4 MS. TYLER: Let's get a time check and go  
5 off the record.

6 (Recess taken from 3:50 to 3:58 p.m.)

7 BY MR. MANNING:

8 Q. Have you, sir, set up some system whereby you  
9 analyze literature related to the issues of  
10 advertising and marketing and its impact on kids, do  
11 you have some method by which you read that?

12 A. I do literature searches by keywords and pull  
13 the literature, read the literature, see what I  
14 assess in my academic opinion is credible, read that,



15 utilize that and set the remaining aside.  
16 Q. How often do you do that? Do you do it once a  
17 month, once every three months?  
18 A. I read literature every day.  
19 Q. And are you --  
20 Do you have an understanding that you are paid  
21 to do that for the tobacco industry?  
22 A. I do it whether the tobacco industry pays me or  
23 not. I do it as part of my work. It's high-risk  
24 behavior patterns. If there is something that the  
25 tobacco industry would like, then the tobacco

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1 industry says, gee, what do you think of this, Ed?  
2 And if I don't have any opinion, I don't have any  
3 opinion, sorry.  
4 Q. Do you on a regular base do literature searches  
5 and reading, the time for which, your time, you are  
6 billing to the tobacco industry?  
7 MS. TYLER: Objection.  
8 Q. Has something been set up with you whereby you  
9 are supposed to look at, stay on top of this, Ed,  
10 read it, let us know what's going on. You're the  
11 expert, you're the man, tell us what's happening?  
12 MS. TYLER: Objection.  
13 A. No. I read it. If they call me and want some,  
14 you know, Minnesota thing then I guess it's the  
15 reverse. They know I'm reading it. If they wish to  
16 ask me a question, then they probably know that since  
17 I'm an expert they can ask me the question.

18 Q. Are you familiar with the Food and Drug  
19 Administration's report and comments to -- as a part  
20 of the Department of Health and Human Services report  
21 regarding regulations restricting the sale and  
22 distribution of cigarettes and the smokeless tobacco  
23 products to protect children and adolescents, are you  
24 familiar with that?

25 MS. TYLER: I object to your asking this

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1 witness about a document, from which I believe you  
2 have been reading from for the past half hour,  
3 without showing him the document.

4 MR. MANNING: Noted, counsel.

5 MS. TYLER: Which has not been  
6 predesignated for this deposition.

7 MR. MANNING: I asked him if he is familiar  
8 with it.

9 A. The smokeless --

10 Q. It's an August 1995 document. Are you familiar  
11 with it?

12 A. I probably have read it.

13 Q. You probably have read it?

14 A. Probably have, yes.

15 Q. Do you have it in your file?

16 A. It's not here.

17 Q. It's not on your list?

18 A. No.

19 Q. Why do you say you have probably read it,

20 something strike your mind about it?

21 A. Just when the FDA or CDC pulls out something I

22 usually scanned it, reviewed it, tried to focus on it

23 for a period of time.

24 Q. They are important bodies for you to read?

25 A. Any time the NIH, the CDC, the FDA speaks in

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1 relationship to high-risk behavior patterns I try

2 diligently to have read it. If I skip something, I

3 might have -- I try not to -- I'm somewhat of a

4 reading mill so that's -- you know, I would say I

5 probably read that.

6 Q. In general you respect the work of the CDC, the

7 NIH, the FDA, in general?

8 A. Yes, in general, without question, I think I --

9 yes, I certainly do. I can disagree with them as to

10 their conclusions, but I highly respect the work that

11 they do.

12 Q. Turn to page 6 of your report, please. In the

13 middle of that first paragraph, about eight lines

14 down, over on the right there it says, "Dr. Morse

15 will testify that based on the literature" -- do you

16 see that?

17 A. Yes.

18 Q. -- "and past experience, it has been

19 demonstrated that the best way to reduce the

20 incidence and prevalence of adolescent smoking is to

21 enforce the state laws prohibiting minors' purchasing

22 or possessing cigarettes." Do you see that?

23 A. Yes.

24 Q. You see you say it has been demonstrated?

25 A. Uh-huh.

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1 Q. By who?

2 A. By states, I believe, starting with Vermont, New  
3 York, California, states have tried to do this and --  
4 Connecticut -- they have been successful in reducing  
5 cigarette -- you know, consumption of cigarettes.

6 Q. And is that contained on the 19 articles on the  
7 topic of law enforcement that we touched on earlier  
8 in your report?

9 A. Some pieces, parts thereof, probably would in  
10 general I would think, yes.

11 Q. Then you go on to say here, "Dr. Morse will also  
12 testify that there is a conceptual basis" -- a  
13 conceptual basis, I note, -- upon which to argue that  
14 the continued identification of "Adolescent Smoking"  
15 in the mass media as a negative phenomenon could well  
16 act as a catalyst stimulating the youth of America to  
17 rebel and experiment with smoking in larger numbers  
18 and at earlier stages than they do currently. Do you  
19 see that?

20 A. Yes.

21 MS. TYLER: I believe it's "ages," not  
22 "stages."

23 MR. MANNING: Thank you.

24 Q. Now you are making a very clear distinction here

25 between a conceptual basis and something research

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1 based?

2 A. Right, my theoretical consideration.

3 Q. So this -- at least at this point you are

4 willing to offer an opinion about your own

5 theoretical opining versus something that's based in

6 research?

7 A. Right.

8 MS. TYLER: Objection.

9 Q. Correct?

10 A. Yes.

11 Q. Because this sentence is not in any way based in

12 research.

13 A. No, no, says "conceptual."

14 Q. But it's not based on research?

15 MS. TYLER: Objection.

16 A. Right, it's conceptual.

17 Q. Right. So this concept that you have here, this

18 conceptual basis for your research, essentially

19 within that concept that you have is the idea that in

20 fact the media is influencing smoking; correct?

21 MS. TYLER: Objection.

22 Q. That's within that concept. If the media

23 continues to do this identification, the mass media,

24 of the negatives of adolescent smoking then it's

25 going to impact it to the media, isn't it,

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1 conceptually?

2 A. From my theoretical construct of the issue, yes,  
3 rebellion could occur, and thus by saying it's bad,  
4 they could be moved towards it, yes.

5 Q. Right on. And rebellion is a key item of kids,  
6 isn't it?

7 MS. TYLER: Objection.

8 Q. They respond to it. We know that. I mean, you  
9 know that as an adolescent kind of focused person,  
10 adolescents get into rebellion, don't they?

11 A. Some significant portion of them do, yes.

12 Q. We all know that from our own growing-up stage;  
13 correct?

14 A. I would say that lots of children do rebel,  
15 yes.

16 Q. Are you aware of the research specifically that  
17 the Philip Morris company did with respect to the  
18 Marlboro Man and its appeal to rebellion and  
19 adolescents? Are you familiar with that?

20 MS. TYLER: Objection.

21 Q. I'm sorry?

22 A. No.

23 Q. No. Are you aware that it exists?

24 MS. TYLER: Objection.

25 A. Not that I -- The Marlboro Man appealed to

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1 adolescents, could you give me a year of the study?

2 Q. Adolescent rebellion.

3 A. Could you give me a year, a date, a time, a  
4 context?

5 Q. You bet, you bet. It was over a period of time  
6 in the '60s, mid-'60s before the campaign was really  
7 launched.

8 MS. TYLER: Objection.

9 A. Boy, you are pushing on my memory. I -- As I  
10 recall, there was concern somewhere in a time period  
11 there what did the Marlboro Man mean and who is it  
12 aimed at, where is it going, but that would be at a  
13 personal level not an academic professional level.

14 Q. Where do you have that knowledge from on a  
15 personal level?

16 A. Just general recall of living.

17 Q. Way back when, you mean?

18 A. That's 30 years you are referring to now, sir,  
19 yes.

20 Q. You have personal recollection of that back then  
21 is what you are saying?

22 A. I'm saying I think I do. I'm not sure. I think  
23 that there was some degree of perturbation in society  
24 with regard to the Marlboro Man and what he  
25 represents.

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1 Q. Are you familiar with how the Marlboro Man was  
2 invented, how that was created?

3 A. I probably have a very distorted personal,

4 non-professional concept of why it was done but it  
5 would be at a -- it would be only on a personal  
6 level.

7 Q. You never asked Philip Morris to see the focus  
8 group documents they did in Canada and here with ad  
9 agencies the way the FDA did focus group data to see  
10 how they went about discovering the Marlboro Man,  
11 particularly in relationship to rebellion and kids?  
12 You have never asked for that?

13 MS. TYLER: Objection.

14 A. You asked me whether I know it exists? Or now  
15 it's a different question.

16 Q. Do you know it exists?

17 A. I don't --

18 MS. TYLER: Objection.

19 A. I don't know whether it exists or not.

20 Q. Hence you have never asked for it?

21 A. No, I certainly never asked for it.

22 Q. Sir, you make a statement on page 7 -- if you  
23 return to it, please -- for the life of me I'll just  
24 tell you right off from the beginning, I don't  
25 understand. I'm going to ask you to explain it to

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1 me; okay?

2 A. All right.

3 Q. In that second sentence you said, "If cigarette  
4 advertising had the impact on the smoking behavior  
5 patterns of children and young adults that it is  
6 alleged to have, one would expect smoking patterns of



7 young people to be homogeneous...."

8 A. Homogeneous, yes, sir.

9 Q. Example, bracket, "e.g. all adolescents exposed  
10 to cigarette advertising would smoke," end of  
11 bracket. Are you -- Are you seriously saying in that  
12 sentence that if cigarette advertising, if it had an  
13 impact at all on the smoking behavior patterns of  
14 kids, that you as a behaviorist and a researcher and  
15 a Ph.D. would expect the smoking patterns of all kids  
16 to be homogeneous?

17 MS. TYLER: Objection, misstates the  
18 report.

19 Q. And furthermore, that all adolescents exposed  
20 would smoke, they all smoke the same way, the same  
21 thing and all smoke, is that what you are saying to  
22 this jury?

23 MS. TYLER: Objection, misstates his  
24 report.

25 MR. MANNING: Thank you. Now the witness

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1 can testify.

2 MS. TYLER: Objection.

3 A. I said that if cigarette advertising had the  
4 impact on the smoking behavior patterns of children  
5 and young adults as it is alleged to have, and when  
6 persons allege that I've heard, and I've heard people  
7 today in this room, persons very strongly say the  
8 tremendous impact that it has, then I would expect as

9 a researcher anything that was purported to have that  
10 strong an effect, if it so had such a strong effect  
11 then I should not observe this wide variation in  
12 smoking behavior, number one. Number two, I would  
13 not expect necessarily that such a large portion of  
14 adolescents don't smoke.

15 Q. How do you come --

16 How do you arrive at that conclusion as a  
17 behaviorist and researcher, how do you arrive -- is  
18 this a conceptual thing again? This isn't a  
19 research-based thing, is it?

20 MS. TYLER: Objection.

21 A. This is a counter-positive. If someone said it  
22 does do a whole lot, then I should observe its  
23 behavior, I need to observe its behavior. I don't  
24 observe its behavior.

25 Q. Is this statement here in your report that we

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1 are talking about, is that a research-based  
2 statement?

3 A. You bet.

4 Q. Is it?

5 A. You bet.

6 Q. Tell me, list for me as you can remember --

7 A. Monitoring the Future, 1974 to 1994, Michigan --  
8 University of Michigan.

9 Q. Got it.

10 A. You got it. That's it, done.

11 Q. What else?

12 A. You're finished right there.  
13 Q. Is that it?  
14 A. Look at the behavior patterns, youth risk  
15 behavior --  
16 Q. I'm familiar with the study.  
17 A. Okay, good.  
18 Q. But tell me, what about that study, Monitoring  
19 the Future, the Michigan study that we are familiar  
20 with, what about that study suggests that if  
21 cigarette advertising had the impact on the smoking  
22 behavior patterns of children and young adults that  
23 it is alleged to have, alleged to have impact --  
24 A. That's what you allege.  
25 Q. You bet.

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1 A. I don't allege it.  
2 Q. You bet, you bet I do. More importantly, let me  
3 just say Hubert H. Humphrey, the state of Minnesota,  
4 Blue Cross and Blue Shield allege it; okay?  
5 A. Uh-huh.  
6 Q. And if you -- What you say, I'm just reading,  
7 "is alleged to have, one would expect smoking  
8 patterns of young people to be homogeneous."  
9 A. Uh-huh.  
10 Q. Example, "all adolescents exposed to cigarette  
11 advertising would smoke." What about the Michigan  
12 study empirically and from a research standpoint  
13 supports that sentence?

14 A. There are regional differences depending on the  
15 part of the country you are talking about with regard  
16 to the children and that they vary by age. You can  
17 see it quite clearly that they don't consistently  
18 hold a pattern in any way, shape or form by age, and  
19 they do not hold it by region of the country, because  
20 the study is broken up and data collected by region.  
21 So we have to assume that there must be things  
22 operating to affect those differences in patterns  
23 that are observed.

24 Three, over time, we are talking about time,  
25 they waffle, people smoking, up and down, changes

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1 dramatically, eighth graders at one point in time, an  
2 eighth grader at the next point in time, the eighth  
3 grader in the next point in time, eighth grader in  
4 the next point in time, ninth grader in the next  
5 point in time on, and tenth grader, 11th grader, they  
6 are not consistent numbers. They move, they  
7 vacillate, they change, they alter, so there are  
8 things that must be significantly impacting this way  
9 beyond anything that's being purported that  
10 advertising is a phenomenon that alters and changes  
11 the patterns of material, their smoking behaviors. I  
12 think that's reasonably clear to me.

13 Q. You make a statement here --

14 A. Uh-huh.

15 Q. -- that if cigarette advertising had this impact  
16 that it's alleged to have, you as a researcher and

17 Ph.D. would then expect smoking patterns of young  
18 people to be homogeneous, meaning any kid exposed to  
19 it would smoke.

20 A. That's usually what's presented to me, yes. And  
21 clearly the data don't indicate that cigarette  
22 advertising has that strong an impact at all or even  
23 a reasonably strong impact.

24 Q. What do you mean by the last phrase in that  
25 paragraph, "patterns of smoking are highly

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1 differentially distributed," what do you mean by  
2 that?

3 A. It means they show high levels of variation.

4 Q. Kids smoke differently.

5 A. No, no, they probably smoke the same way. The  
6 frequency of which that small group of children smoke  
7 on a regular basis, versus smoke ever, versus smoke a  
8 hundred cigarettes. We earlier this morning decided  
9 you wanted to leave us in an area of just children 9,  
10 10, 11, 12, 13, 14 to 18 that smoke a pack a day,  
11 that's a very different group of individuals that is  
12 in fact recorded in here and we show variation by  
13 region, by gender, et cetera, et cetera, as reported  
14 here. There has to be free time to smoke eight packs  
15 of cigarettes a day.

16 Q. Let's go to page 8.

17 A. Uh-huh.

18 Q. Last sentence of that first paragraph says, "The

19 teenager who takes up smoking is engaging in a  
20 high-risk behavior pattern, the health impact of  
21 which may not be felt for many years, if at all."  
22 A. Correct.  
23 Q. You are not a medical doctor.  
24 A. That's correct.  
25 Q. You don't know whether or not the health effects

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1 are felt at all or not at all, that's not an opinion  
2 that you can give, "if at all," is it?

3 MS. TYLER: Objection.

4 A. This would be clearly based, sir, on the things  
5 we have already spoken to earlier this morning with  
6 regard to the CDC's assumption that 400,000 persons  
7 die each year. They don't die when they are four,  
8 five, six, seven, eight, nine and ten. These are  
9 impacts of a disease that are much further into the  
10 future. That's all that's being said there. Many of  
11 them, given it is a high-risk behavior pattern, many  
12 smokers engaging as adolescents, engaging in other  
13 high-risk behavior may very well die of something  
14 prior to dying of cigarettes, smoking cigarettes, or  
15 cigarette related. That's all that's saying.

16 Q. Other than reading the CDC reports you have  
17 talked to me about, you don't know anything about the  
18 health impact of cigarette smoking other than what  
19 you have read in the CDC?

20 MS. TYLER: Objection.

21 Q. As we have acknowledged; correct?

22 A. We stated that earlier this morning. That is  
23 exactly what we have stated.  
24 Q. Just want to make sure.  
25 A. Okay.

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1 Q. Sir, next sentence, says, "Dr. Morse will  
2 testify about the structure of high-risk health  
3 behavior as multi-dimensional, which reduces the  
4 feasibility that adolescents' behavior patterns are  
5 the result consequence of a signal force such as  
6 advertising, marketing or promotion."  
7 Have you ever seen anybody say that adolescent  
8 behavior patterns are the result of a single force,  
9 such as smoking, the single force being advertising,  
10 marketing or promotion, have you ever seen anybody  
11 say that or heard anybody say that?  
12 A. At a professional level, no.  
13 Q. Life is frequently multidimensional, isn't it?  
14 A. At a personal level, I think sometimes people  
15 get excited about things and try to say that maybe  
16 there is a single course of -- that there is going to  
17 be a change just if we change a thing, and I don't  
18 think that's probably true.  
19 Q. You make the statement here, sir, on the top of  
20 page 9, you say, "This fact explains why commercial  
21 advertising used with regard to cigarettes has little  
22 if any impact on adolescent smoking behavior. For  
23 example, by far two of the most well-publicized

24 images in smoking today are the Marlboro Man and Joe  
25 Camel. These two images, while easily recalled by

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1 persons of all ages, races and genders, regardless of  
2 whether they smoke or not, in fact," in fact "show no  
3 consistent association with smoking behavior  
4 patterns." Do you see that?

5 A. Yes.

6 Q. Is that a research-based statement?

7 A. That would be -- certainly the secondary  
8 research I have would indicate that I don't know of  
9 anything that would indicate those patterns, and in  
10 my primary research and looking at children's  
11 responses wouldn't show anything.

12 Q. Well, sir, what specifically? List, if you  
13 will, if you have to go through your bibliography, go  
14 ahead and do that, list for me either from your  
15 memory, what you remember, that supports this.  
16 Because you are saying this is a research-based  
17 statement, is that right, that sentence? You are  
18 going to stand on research on that, not just your own  
19 personal opinion. Is that right?

20 A. We need to go back to the original premise.

21 Sir, we are taking things -- We need to go back to  
22 the first paragraph, sentence before, if you want to  
23 do it.

24 Q. If I'm taking something out of context, you tell  
25 me.

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1 A. No, no. I'm just asking, do we want to start  
2 "Dr. Morse will testify that there are self-image  
3 groups in which the adolescent smoker is identifying  
4 and those groups consist of peers, family members,  
5 extended family members and significant others" --

6 (Interruption by the reporter.)

7 Q. I understand your full report; okay? If you  
8 want to read it, you can. My questions are very  
9 narrow.

10 A. I'll proceed to read it, if it's all right.

11 Q. I think it's a waste of time, but if you want  
12 to, go ahead.

13 A. Dr. Morse will --

14 Q. I have no question for you. Is there a question  
15 in front of you?

16 A. I believe so. You --

17 Q. Let me ask you a question, very narrow  
18 question. This line on page 9, you say, For example,  
19 by far two of the most well-publicized images in  
20 smoking today are Marlboro and Joe Camel, Marlboro  
21 Man and Joe Camel. These two images, while easily  
22 recalled, regardless of whether they smoke or not --  
23 I skipped a few things there; it's no problem -- in  
24 fact show no consistent association with smoking  
25 behavior patterns. And I say to you, says who?

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1 A. I -- I don't recall any literature, I don't know  
2 literature, so these are well-publicized images and I  
3 don't know of any credible literature research that  
4 says that Marlboro Man and Joe Camel has any effect,  
5 these two images, on the imaging, which is what you  
6 are talking about in this total package, previous  
7 paragraph on self-imaging of groups.

8 Q. Wouldn't you agree with me, sir, it is  
9 distinctly possible here as a researcher that when  
10 you come to this point in your research where you  
11 look at Marlboro Man and Joe Camel --

12 A. Uh-huh.

13 Q. -- and you find that there is no research,  
14 nobody has been able to comment in any way in the  
15 research community, that these images show any  
16 consistent association with smoking behavior?

17 A. Right.

18 Q. That the best place, then, to look, to ask, to  
19 scratch the surface to see if it's true would be with  
20 the people who, one, created the images, and two, who  
21 are tracking the success of images, and three,  
22 tracking the profits and smoking behavior of those  
23 who are using their product; wouldn't that be logical  
24 for you as a Ph.D. objective researcher?

25 MS. TYLER: Objection.

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1 A. No.

2 MS. TYLER: Misstates his testimony.

3 Q. That wouldn't even be logical for you to do?  
4 A. No.  
5 Q. To go to those sources, to go to Philip Morris  
6 and R.J. Reynolds and say, I want to know, and you  
7 can just, of course, go to one of these lawyers,  
8 Allen Purvis, Julia, John, Mark, and you could just  
9 say get me all of the Philip Morris and R.J.R.  
10 Reynolds studies that track Marlboro Man and Joe  
11 Camel that show the association, if one exists at  
12 all, between these images and smoking behavior of  
13 kids. You could do that, couldn't you?

14 MS. TYLER: Objection.

15 Q. You could ask that question.

16 A. I could. I would not.

17 Q. You would not and you have not.

18 A. Because it isn't there. I would not assume they  
19 have done credible scientific research which is peer  
20 reviewed, and examined the questions objectively, and  
21 an ability to design studies that were reliable,  
22 verifiable and had validity, so I would not look at  
23 those resources. I would look at resources which  
24 were done independently and look to that research,  
25 and that -- I don't know whether there is anything.

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1 If there is something to be known, then someone, I'm  
2 sure, by me making the statement will bring up and  
3 show me that there is something, but it will be  
4 outside -- it will not be what cigarette companies  
5 might self-servingly, which I assume they do their

6 own research for their own self-serving purposes,  
7 they are not held to the objective standards of  
8 science, they are held to the nonobjective standards  
9 of their own business, their internal documents.  
10 Q. So you would assume that if evidence like this  
11 existed that these lawyers knew of that they wouldn't  
12 keep you in the dark, they wouldn't like, you know,  
13 dupe you. You think they would in good faith go get  
14 those studies that Philip Morris and R.J.R. Reynolds  
15 did, particularly if they are good studies, and give  
16 them to you and say these might not be peer reviewed  
17 but, gosh, Ed, you're an expert for us, you are  
18 hanging yourself out there to dry, you are taking it  
19 right on the chin for us in Florida, in Mississippi  
20 and now Minnesota, and even before Congress, which we  
21 will come back and talk about some of your prior  
22 testimony we haven't talked about, and gosh, Ed, we  
23 want to be fair to you, we want to show you this  
24 stuff. Would you expect that from these lawyers you  
25 work with?

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1 MS. TYLER: Objection, misstates his  
2 testimony.

3 Q. Do you expect them to be fair with you?

4 A. I don't --

5 MS. TYLER: Objection.

6 A. -- expect them to choose my research in any way,  
7 shape or form. I don't expect anybody to choose my

8 research in any way, shape or form. I have to choose  
9 and decide what volumes of the multimillions of  
10 citings that could come and pieces of data and units  
11 of data, what to choose would be important. And I  
12 don't think, unless I was doing ethnography of the  
13 cigarette company, would I wish to explore what they  
14 generate as information for their own internal  
15 purposes for which they are never held to public peer  
16 review, scientific review, any scientific research  
17 whatsoever. It would seem to me that that would be  
18 -- Even if they said it was there, I can tell you  
19 honestly I would say thank you very much, I probably  
20 would not like to take my time to observe it.  
21 Q. Because you assume, you are making an assumption  
22 that you don't want to take your time to observe it,  
23 that it's not credible, it's not done well.  
24 A. Correct, to scientific standards.  
25 Q. All right.

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1 A. They may be done perfectly well for their  
2 interests and their concerns, but not for my interest  
3 of research concerns as a scientist, no.  
4 Q. But this was a topic, a topic, if you recall  
5 when we were talking about the Marlboro Man and Joe  
6 Camel, that you said you couldn't find anything in  
7 science on, it didn't exist.  
8 MS. TYLER: Objection, that's not what he  
9 said.  
10 Q. Correct?

11 MR. MANNING: Well I'm just asking him.  
12 A. I think there are things on Marlboro Man and Joe  
13 Camel, people have talked about that factor, but I  
14 don't know that it has any relationship to the  
15 statement that I have put forth here.  
16 Q. But you are not aware of any science that has  
17 been done on the Marlboro Man and Joe Camel in  
18 relationships and studies that are correlating them  
19 to smoking behavior patterns, that's what you told  
20 me.  
21 MS. TYLER: Objection, that's not what he  
22 told you. He said the studies weren't credible.  
23 MR. MANNING: I'm asking.  
24 A. I said the studies aren't credible.  
25 Q. Are there any studies that are done?

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1 A. That are credible?  
2 Q. Any at all on the topic.  
3 A. I think there are topical studies on various  
4 imaging in the tobacco industry. I find for the most  
5 -- I find that they are not credible and I have so  
6 stated before that I don't know that there are  
7 credible studies that show any consistent pattern,  
8 show a consistent. Please note there is no  
9 consistent association. That would mean study after  
10 study after study after study would show the exact  
11 same numbers in the exact same way, exact same  
12 correlations, covariances, multiple correlations,

13 et cetera.

14 Q. Thank you. Let's go on to page 11 of your  
15 report, if you will; okay? Do you see where you say,  
16 at the bottom of that middle paragraph you say, "As  
17 evidenced from the data reported, it is reasonably  
18 safe to conclude that by allowing adolescent students  
19 to smoke, even in small numbers, the schools' actions  
20 or inactions directly lend legitimacy to the  
21 children's behavior patterns"? Do you see that?

22 A. Yes.

23 Q. You are not suggesting that school teachers and  
24 school principals are at fault for kids smoking, are  
25 you, in Minnesota? Is that what you are saying to

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1 this jury?

2 A. I'd like to ask instructions from my attorney at  
3 this time. I'd like to go off the record, please.

4 MR. MANNING: You can do that any time you  
5 would like.

6 MS. TYLER: Okay. Go off the record.

7 (Recess taken from 4:28 to 4:34 p.m.)

8 BY MR. MANNING:

9 Q. Now, sir, you're not saying, are you -- we are  
10 talking about page 11 of your report -- that -- that  
11 schools in the state of Minnesota or principals or  
12 teachers have done something wrong, are you, with  
13 respect to kids' smoking behavior?

14 A. You're taking this last sentence out of context,  
15 if I may be permitted to put it into context.

16 Q. Any time I've taken something out of context,  
17 you're -- I just want to make sure you know the  
18 question that's in front of you.  
19 A. Yes, sir.  
20 Q. Go ahead and answer the question.  
21 A. This is a part and parcel of summary from what's  
22 called the YRBSS, or the Youth Risk Behavior Survey  
23 -- Surveillance Survey, which indicates in a general  
24 fashion that a portion of students do a variety of  
25 things which are listed previously on that same page

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1 and that in the United States in the general -- not  
2 referring specifically to the state of Minnesota,  
3 though I believe that Minnesota is a part-and-parcel  
4 practice, I may be wrong but I believe they actually  
5 participate in the youth surveillance survey but I do  
6 not know whether that is specific to them -- but in  
7 general we do -- the finding is that schools,  
8 actively or passively, still in 1997 report that  
9 adolescents smoke on their premises. Now I do not --  
10 I'm not insinuating, including or stating that that  
11 is specific to Minnesota. That could be found by  
12 reviewing the data for Minnesota.  
13 Q. Have you reviewed data that says that schools  
14 allow kids to smoke on the premises, is that what  
15 you're saying?  
16 A. I'm sorry, please restate the question.  
17 Q. Are you referring to data -- look at your  
18 sentence -- it is reasonably safe to conclude that by



19 allowing, allowing, are you suggesting that schools  
20 allow kids to smoke, in general?  
21 A. I'm not suggesting it whatsoever. That is a  
22 statement of the Youth Risk Behavior Survey or --  
23 Surveillance. That's not in my statement. I'm doing  
24 secondary analysis, reporting it in this report, that  
25 that in fact is a fact as given by the youth risk

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1 behavior survey.

2 Q. So you are merely doing a secondary  
3 regurgitation, so to speak, of this report here.

4 MS. TYLER: Objection.

5 Q. Right?

6 A. "Regurgitation" is unpleasant, but if that's  
7 what you would like to say, then we will hold it at  
8 that.

9 (Interruption by the reporter.)

10 Q. On page 12, then, at the bottom, if you will,  
11 you don't like this Knowledge Attitudes and Practices  
12 Model, KAP, right, you don't think that's been very  
13 effective?

14 A. The word "like"?

15 Q. Well you don't think it's been very effective.

16 A. No, I don't.

17 Q. And you are saying here the underlying premise  
18 is simple, "if you educate people enough about why  
19 they should not do something they will stop," and you  
20 are saying that's a premise that you disagree with.

21 A. Correct.

22 Q. So as an example, would you disagree that sex  
23 education is effective, for example, that it's really  
24 something --

25 A. With whom, for whom, by whom, et cetera?

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1 Q. Let's assume it's not done by peers. Let's  
2 assume it's sex education in a more traditional way  
3 that we have known it, by book form, movies, adults  
4 instructing kids about sex education.

5 A. By whom, where?

6 Q. Well let's just say it's sex education pursuant  
7 to the KAP model; okay?

8 A. In a school setting?

9 Q. Sure, let's say in a school setting.

10 A. Not by parents?

11 Q. Right.

12 A. Then I think we would demonstrate most of that  
13 sex education is probably not effective, yes.

14 Q. And in fact leads to kids having sex more than  
15 if they didn't have the education at all; is that  
16 right?

17 A. Did I say that?

18 Q. That's what I'm asking you, if that's what you  
19 are saying here by that sentence.

20 A. What sentence, sir? You didn't point me to a  
21 sentence.

22 Q. All right. I read you a sentence, "if you  
23 educate people enough about why they should not do

24 something they will stop," and I said that that is  
25 something you disagree with, that's a premise of the

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1 KAP model that you disagree with.

2 A. That's a premise of the KAP model I disagree  
3 with, and it has nothing to do with your next  
4 sentence which you then said will cause them to  
5 engage in the behavior.

6 Q. That's what I'm asking you. "Unfortunately" --  
7 It says, "Unfortunately, when put into practice in  
8 the field, following the tenants of the KAP model  
9 most often ends up with highly educated subjects who,  
10 while well-informed by a particularly dangerous  
11 behavior, nevertheless continue to exhibit the  
12 behavior pattern unabated."

13 A. That doesn't say anything in relationship to the  
14 education process produced the behavior. That just  
15 says the behavior was there and education process was  
16 there.

17 Q. And the education process has no impact on it  
18 one way or the other, prevent it or enhance it. It's  
19 just a neutral.

20 A. In my studies in looking at youth behavior in  
21 the state of Louisiana it would certainly seem not to  
22 be effective. I don't think anyone's attempted to  
23 figure out whether it increases or decreases the  
24 actual behavior. It certainly doesn't reduce it.

25 Q. Now in the middle of that paragraph you say, we

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1 are talking about life cycle from childhood and  
2 adolescents, and I'm going to go to the sentence in  
3 the middle that says "...gradually changes as a child  
4 moves into adolescence. During this next phase of  
5 the life cycle, the individual is much more attentive  
6 to his peers."

7 A. Uh-huh.

8 Q. We all understand that; right?

9 A. That's what I'm writing.

10 Q. And you believe that that's a general tenant of  
11 adolescents.

12 A. If we start from the sentence or paragraph so we  
13 do not come out of context, which is important.

14 Q. Right.

15 A. We are suggesting "During childhood, parents and  
16 other members of an individual's immediate nuclear,  
17 and in some cases, extended family are the most  
18 important sources of information and the primary  
19 socializing agents. This gradually changes as a  
20 child moves into adolescence." That is what I have  
21 stated for you and for the court.

22 Q. The individual is, then, in adolescence much  
23 more attentive to peers; right?

24 A. This would be a general trend that they begin --  
25 they become important to them.

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1 Q. Right.

2 A. More important than the peers were in the past.

3 Q. Right. Now are you aware, sir, that tobacco  
4 companies, all of them, every single one of them,  
5 were fully aware of this, studied it, studied  
6 adolescent behavior, studied the effects and the  
7 power of peers on adolescents, ever heard of that?

8 MS. TYLER: Objection.

9 A. No.

10 Q. Ever heard of that before?

11 A. Not that I know of.

12 Q. Have you heard the tobacco companies said  
13 publicly we are not interested in kids, in studying  
14 kids, appealing to kids or selling kids? You have  
15 heard them say that; right?

16 MS. TYLER: Objection. "Selling kids"?

17 MR. MANNING: Selling to kids.

18 A. Selling to kids.

19 Q. Have you heard them say we are not interested in  
20 kids, we don't study about them, we are not  
21 interested in selling our cigarettes to them? We  
22 talked about this before. Have you heard that said  
23 publicly by tobacco companies?

24 A. The middle statement, this makes me feel very  
25 uncomfortable, will have to pick apart your

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1 statement. The middle statement, they are not  
2 interested in selling to kids I believe they made in

3 public statements to newspapers, they were picked up  
4 by newspapers. I assume if we make the assumption  
5 the newspaper reported what they said factually, I've  
6 only seen them say that themselves, only what the  
7 cigarette companies are picked up on, they said they  
8 are not interested in selling cigarettes to kids.

9 Q. So in fact if all the companies studied  
10 adolescents and the peer process and the power of  
11 peers on adolescents and how that relates to  
12 advertising, brand appeal and the promotion of their  
13 products, then their statements, if correctly quoted  
14 in the press that they are not interested in kids,  
15 would be untrue.

16 MS. TYLER: Objection.

17 Q. Correct?

18 A. I don't know the temporal sequence of the events  
19 that you just specified, so it could be true, could  
20 be not true, could possibly be true. They could have  
21 changed their ways and then made the statement so  
22 that they say I'm no longer interested in them and we  
23 did this 25,000 years ago or whatever, but you are --  
24 I must know the temporal sequence of the question you  
25 are asking or I can't determine whether they lied.

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1 Q. But if the temporal sequence is such that they  
2 made the statement publicly "we are not interested in  
3 selling to kids" and they made it repeatedly, and at  
4 the same time that those statements are being made,

5 at the very same time, over a period of time, they  
6 are studying kids, they are studying the peer review  
7 -- the peer process, the peer-group-pressure  
8 process, they are studying the impact of peers, so if  
9 all the temporal sequence is on target and they just  
10 didn't discontinue anything, they kept right on doing  
11 it, then in fact it would be a lie, as we've said;  
12 right?

13 MS. TYLER: Objection.

14 Q. Their public statements they don't target kids  
15 would then be a lie; correct?

16 MS. TYLER: Objection.

17 A. You make -- This is an assumption. You haven't  
18 shown me a document.

19 Q. I know. We will get to that tomorrow.

20 A. This is hypothetical.

21 Q. Right.

22 A. So there would possibly be a hypothetical  
23 inconsistency.

24 Q. You bet.

25 A. That's about as far as we could get.

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1 Q. That's right.

2 A. That's all I got, there could possibly be a  
3 hypothetical inconsistency in a world that doesn't  
4 exist because I don't have anything to say they said  
5 it, but it could be a hypothetical inconsistency.

6 Q. But if those weren't hypotheticals and they were  
7 real and that was reality, then it wouldn't be a

8 hypothetical, then it would be a lie, wouldn't it?

9 MS. TYLER: Objection.

10 Q. Wouldn't it?

11 A. You are far outside my ability. I don't know

12 the logic that's involved in that one.

13 Q. Is that right? Don't have that ability?

14 A. I think it's still a hypothetical inconsistency

15 on that one.

16 Q. Okay. Sir, on the last page of your report --

17 A. Uh-huh.

18 Q. -- what do you mean by that first sentence,

19 first paragraph? What does it mean? I don't

20 understand it, "cohorts," "previous cohorts"?

21 A. "Dr. Morse will testify in terms of

22 understanding the dimensions of youth participation

23 and high-risk behavior patterns, it is important to

24 note that negative attitudes held by previous cohorts

25 are clearly fading."

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1 Q. What are negative attitudes held by previous

2 cohorts that are clearly fading; what's that all

3 about?

4 A. Can I give you a "by way of" example?

5 Q. Sure.

6 A. If we were ten years ago, five -- ten years ago

7 -- I don't know where we are in Minnesota at this

8 time -- cigar smoking in a restaurant would be seen

9 as deplorable, the people might even get up and



10 leave. Cigarette smoking by this time was the worst  
11 thing in the world, cigar smoking would be terrible.  
12 By 1995, at least in New Orleans, we begin to see a  
13 fading of that and we see the allowance of cigar  
14 smoking maybe at the bar or maybe at this end of the  
15 restaurant, and then cigar bars open up and cigar  
16 restaurants open up and all of a sudden something  
17 that had previously been rejected by a cohort of  
18 persons, a grouping of persons in one age group, now  
19 40 year olds, 50 year olds, 60 year olds, they are  
20 dropping off smoking cigars in public places, 30 year  
21 olds, 25 to 30 year olds, now they see it as a  
22 behavior pattern and now you see a huge trend. We  
23 now have cigar bars and martini bars even once again,  
24 and then you see them smoking and having a martini in  
25 a restaurant that probably previously, not that many

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1 years ago probably didn't even have smoking in it.  
2 So cohorts, from cohort to cohort to cohort, change  
3 their patterns.  
4 Q. You make a statement in the middle there about  
5 "To some extent it may be possible" -- do you see  
6 that one?  
7 A. Yes.  
8 Q. -- "that the larger society, in spite of what is  
9 professed as an ideal culture, is becoming more  
10 tolerant of those who sell alcohol to minors, and  
11 more tolerant of underage drinkers." How do you know  
12 that?

13 A. This would be a personal opinion of observing.  
14 We --  
15 Q. It's not --  
16 A. We seem to be having, in the youth risk --  
17 excuse me -- the youth risk behavior surveys indicate  
18 -- we are watching alcohol consumption move, we are  
19 monitoring the future, we are watching alcohol  
20 consumption, which has now reached 80 percent of all  
21 teenagers had a drink. That's going up, not going  
22 down. That would be the tolerance, Based on  
23 scientific fact.  
24 Q. So it's research?  
25 A. Research.

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1 Q. You note that smoking appears to be on the rise.  
2 A. Yes.  
3 Q. Amongst adolescents.  
4 A. Yes.  
5 Q. And your last sentence is, "These patterns  
6 support the conclusion that the most effective way to  
7 control youth risk behavior is to enforce the laws  
8 prohibiting the sale of cigarettes to youth"; is that  
9 right?  
10 A. That would be my -- That is my conclusion, yes.  
11 Q. So you move from a sentence which describes  
12 smoking is on the rise among adolescents to control  
13 it through law enforcement; correct?  
14 A. This is the last sentence in a paragraph of a  
15 15-page report in which I, at the time I wrote this

16 report, I would -- I feel -- I felt at that time,  
17 which is June 1997, that that will be the  
18 single-most-effective way to make that change, is a  
19 structural change, in other words.

20 Q. Do you think tobacco companies have done  
21 anything to impact the increase of smoking amongst  
22 youth?

23 A. To increase it? I don't know.

24 Q. Don't know?

25 A. No, I don't. I have not read documents to

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1 indicate that. That's -- No, I don't know.

2 Q. You don't know that they have, you don't know  
3 that they haven't.

4 MS. TYLER: Objection.

5 Q. Is that correct?

6 A. I don't know. I do not know.

7 Q. What I said is true, you don't know that they  
8 have done anything to impact it, you don't know that  
9 they haven't done anything to impact it; correct?

10 MS. TYLER: Objection.

11 A. The statement I made, stated was I do not know  
12 whether they have or have not.

13 Q. Done anything to impact increase in cigarette  
14 smoking amongst youth?

15 A. Right.

16 MS. TYLER: Objection.

17 Q. Showing you, sir, what has been marked as

18 Defendants' Exhibit -- Deposition Exhibit 2505, Dr.  
19 Perry's report.  
20 A. Uh-huh.  
21 Q. That's a report that you have read; correct?  
22 MS. TYLER: Do you have a copy for me?  
23 Thank you.  
24 Q. Correct?  
25 A. Yes.

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1 Q. And your lawyers sent it to you; right?  
2 MS. TYLER: Objection.  
3 Q. Right?  
4 A. Yes. Best I recall, yes.  
5 Q. And you read it more than once?  
6 MS. TYLER: Objection.  
7 A. Possibly.  
8 Q. Did you find --  
9 You knew Dr. Perry before you received the  
10 report, who she was, by reputation?  
11 A. By being -- By her reputation, but I didn't know  
12 her.  
13 Q. You never met her before?  
14 A. No.  
15 Q. Never heard her speak?  
16 A. No, I don't think so.  
17 Q. You knew that she had played a prominent role  
18 over many years with the surgeon general's reports?  
19 MS. TYLER: Objection.  
20 A. I don't know what the definition is by

21 "prominent role." She was one person amongst many,  
22 many persons.  
23 Q. Well did you know that she was the senior  
24 scientific editor of the '94 surgeon general's report  
25 on preventing tobacco use amongst young people?

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1 A. Yes, but I don't know how significant that role  
2 was. She takes the leadership in it and I respect  
3 her for that.

4 Q. Let's start on page 3 at the bottom; okay?

5 A. Uh-huh.

6 Q. She says that she will "testify about smoking  
7 onset process. This begins primarily in adolescents  
8 under age 18, despite the fact that smoking is  
9 illegal under age 18 in most states, including  
10 Minnesota." You don't disagree with that statement?

11 A. Absolutely not.

12 Q. She goes on to say, "Nearly one million teens  
13 each year, or about 3,000 teens each day, begin to  
14 smoke cigarettes in the U.S." You don't disagree  
15 with that?

16 MS. TYLER: Objection.

17 A. That is a -- a -- I disagree with it but only by  
18 a technical point. I think it's 5,000 teenagers  
19 start smoking each day and then there is a drop from  
20 five to single time to four, and I think she just  
21 moved ahead to three, to mean the constant, the sort  
22 of residual that then drops to two fifty or below.

23 No criticism intended by her in any way, shape or  
24 form. Just a -- Maybe she moved the numbers around,  
25 but I may have moved them around. I just think the

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1 number is 5, not 3.

2 Q. Okay. The next sentence she says, The first  
3 major conclusion of the '94 surgeon general's reports  
4 is that-- is that, quote, nearly all first use of  
5 tobacco occurs before high school graduation. You  
6 don't disagree with that statement?

7 MS. TYLER: Objection.

8 A. She is talking about the kids; right?

9 Q. Right.

10 A. This is -- No, I don't disagree with that.

11 Q. She says, As an example, according to the '91  
12 National Household Surveys on Drug Abuse, among all  
13 persons who had ever tried a cigarette, 88.2% had  
14 done so by age 18. You don't disagree with that?

15 A. I think that that's accurate.

16 Q. She says, "Among all persons who had ever smoked  
17 daily, 71.2% of those had begun smoking daily by age  
18 18." You don't disagree with that?

19 A. There are studies that would support that.

20 Q. Down to the next paragraph, she says, "Dr.  
21 Perry's review of tobacco industry documents shows  
22 that tobacco companies are well aware of and study  
23 the ages of onset of cigarette smoking and analyze  
24 and utilize data on the incidence and prevalence of  
25 smoking by those under 18 years of age."

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1 Now you have no basis to agree or disagree with  
2 that at all because you never reviewed a tobacco  
3 company document; right?

4 A. Well I don't know whether they utilized the data  
5 on the incidence and prevalence of smoking by those  
6 under age 18. You say the documents exist, but I've  
7 asked to see them and you haven't shown them to me in  
8 good faith. Dr. Perry says they exist, so there is  
9 at least two out of three say these things exist, but  
10 I still haven't seen them. But I don't know who  
11 would have any idea that they utilize the data on any  
12 incidence or whether Dr. Perry might know that, but  
13 I'm not going to challenge her. If Dr. Perry said  
14 she did, she did.

15 Q. Do you understand that generally in a lawsuit  
16 when the money that is going into your pocket comes  
17 from the tobacco companies, when they are the ones  
18 putting the grease in there, the greenbacks that go  
19 right in your bank account -- okay? -- that generally  
20 when there is experts in cases, and then you've  
21 testified in other cases, that generally that when  
22 that happens that if you want to see the documents of  
23 the people that are paying you, generally they are  
24 the ones that show it to you? Do you understand  
25 that?

1 A. That's fine.

2 Q. Okay.

3 A. I don't understand the relevance of that to what  
4 we have just been talking about.

5 Q. You don't need to.

6 A. But we --

7 Q. Just tell the truth and you don't need to  
8 understand relevance, irrelevance, your lawyer will  
9 do all that. They will ask you questions afterwards  
10 if they want to.

11 MS. TYLER: Objection.

12 Q. It's a nice deal.

13 Now next sentence: "Dr. Perry's review of the  
14 tobacco industry documents also shows that the  
15 industry studied and examined the prevalence of  
16 smoking for underage youth because such smoking was  
17 viewed as critical to the future of the industry."  
18 You can't agree or disagree with that because you  
19 haven't reviewed the documents, can you?

20 A. By reviewing the documents I wouldn't be able to  
21 understand that, I wouldn't be able to ascertain  
22 that, whether I reviewed them or not.

23 Q. Why is that, sir?

24 A. Because how do I know what they did with the  
25 documents? How would Dr. Perry know what they did

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1 with the documents? I'm sorry.



2 Q. What's your point?

3 A. You asked me do I know whether -- I couldn't

4 understand any of this because I didn't see the

5 documents. I said I don't know anyone that could do

6 that. You have to assume they did something.

7 Because they wrote the documents doesn't mean in fact

8 they did anything with the documents. They wrote the

9 document. You have a document. That's fine. It's

10 an inanimate object so I wouldn't know. Maybe Dr.

11 Perry would know. Maybe she is privy to things.

12 Q. You would still need to maybe talk to one or two

13 people in the tobacco companies to see whether or not

14 they in fact acted on the documents; is that what you

15 are saying?

16 A. Sir, how many people, inform me, how many people

17 are in the total tobacco industry?

18 Q. Have you ever asked that question before, of

19 your lawyers?

20 MS. TYLER: Objection.

21 A. No.

22 Q. You never asked that?

23 A. Has to be thousands.

24 Q. You don't know that, do you?

25 A. No, I don't know.

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1 Q. No.

2 A. And I certainly wouldn't know who to ask in

3 there, of -- those questions of all those thousands

4 of people.

5 Q. If there are documents that reflected this kind  
6 of activity, do you assume maybe it has people's  
7 names on them who are still alive who you could call  
8 and ask about them?

9 MS. TYLER: Objection.

10 Q. Directors of marketing, things like that?

11 A. That wouldn't necessarily in any way provide  
12 relief to me to understand Dr. Perry's assertion.

13 Q. She goes on to say that Dr. Perry's review of  
14 tobacco industry documents shows that tobacco  
15 companies view adolescents as the major source of  
16 replacement smokers for their business, replacing  
17 older smokers who quit smoking or die. Again, you  
18 just can't comment, can you?

19 A. Of course I can. There aren't any other source  
20 of people except the people on the face of the earth,  
21 so therefore those adolescents are the only persons  
22 that are coming up that would fall into that  
23 category. Otherwise you have adults who either smoke  
24 or don't smoke. This statement has been recorded by  
25 many persons and it makes -- it's not a logical

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1 statement.

2 Q. Why isn't it logical to you?

3 A. Where are there other people? Where would you  
4 get other people except adolescents?

5 Q. Except kids.

6 A. But there aren't any other people, and they

7 don't get them. How do they get them? "Get them"  
8 implies they got them some way, that there was an  
9 action, that they did something, and I've argued  
10 already and presented to you that I don't believe  
11 there is anything the cigarette industry can do to  
12 get those children, so I would argue whatever the  
13 document is, it doesn't exist here that says they did  
14 something.

15 No, I do not agree with it and I don't agree  
16 with Dr. Perry's statement here.

17 Q. Good.

18 A. Obviously they have to replace them, and if they  
19 think they are replacing them, that's one idea. That  
20 they are actually doing it by outcome of their own  
21 behavior, that's a totally different matter and I  
22 don't believe that's been demonstrated.

23 Q. Never been demonstrated in research science to  
24 your knowledge?

25 MS. TYLER: Objection.

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1 A. In the documents, we are now on documents that  
2 say at this point.

3 Q. But you never reviewed the documents?

4 A. We have established that.

5 Q. Clearly.

6 A. So I'm saying I don't know that.

7 Q. You can't say --

8 (Interruption by the reporter.)

9 MS. TYLER: Let him finish his answer,  
10 please. The court reporter is having a tough time  
11 here.

12 Q. You can't say on the face of the documents --

13 MS. TYLER: Let him finish his answer.

14 A. I'm saying that there aren't any other persons  
15 who one on the face of the earth could find to start  
16 smoking except people that haven't smoked, tried it  
17 and quit, or are smoking and going on; therefore,  
18 what other group of persons would be doing the  
19 smoking? Therefore, I don't see it as a valuable  
20 piece of information. It's stating an obvious  
21 truth.

22 Q. All right. The obvious truth being?

23 A. That the only new group of persons to smoke  
24 would have to be people that have not previously  
25 smoked or the encouragement of older persons to start

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1 smoking again, if you can do that. Not my world. I  
2 -- And I don't believe, as I've already indicated,  
3 that can be done.

4 Q. Let's go to the top of page 5; okay? She says  
5 there, For example -- if you want to read prior to  
6 that you can -- an R.J.R. Reynolds Tobacco  
7 Company...document states: "...the loss of younger  
8 adult males and teenagers is more important in the  
9 long term, drying up the supply of new smokers to  
10 replace the old. This is not a fixed loss to the  
11 industry; it's importance increases -- importance

12 increases with time." Do you see that?

13 A. Yes.

14 Q. You have never seen that document, have you,

15 from which she quotes? It's for foundational, there

16 is a next question coming. You have never seen that?

17 A. I've seen this, I have not -- I have read --

18 Q. Not seen the document?

19 A. I have not seen the document from which she

20 takes it.

21 Q. And when you read this in Dr. Perry's report,

22 you didn't ask to see the document, did you?

23 A. No, we have already established that.

24 Q. It goes on to say, "A decline in teenage smokers

25 was likewise discussed in a Philip Morris document:

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1 'Because of our high share of the market among the

2 younger smokers, Philip Morris will suffer more than

3 other companies from the decline in the number of

4 teenage smokers,'" end quote. "In fact, Philip

5 Morris, with its 'Marlboro cowboy' advertising

6 campaign, has long been the leading cigarette brand

7 among youth under age 18; it is no coincidence that

8 Philip Morris is also the largest cigarette company

9 in the U.S." Do you disagree with anything she said

10 there?

11 A. I'm not sure I understand the conclusions drawn,

12 but they are hers and I respect them for whatever she

13 is saying.

14 Q. Are you aware, in the next paragraph, that

15 cigarettes are among the most brand-loyal products in  
16 the U.S.?

17 MS. TYLER: Objection.

18 Q. Are you aware of that?

19 A. The "most brand loyal" means what? What is the  
20 total package of things that are brand loyal? There  
21 is no reference so, I mean, I'm sorry, I'm not being  
22 picky. I just don't have a reference to know what  
23 brand loyalty is more or less than. Cereal?  
24 Sanitary napkins? Alcohol? I'm sorry.  
25 Q. All right.

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1 MR. MANNING: Why don't we take our break  
2 for the night and we will start tomorrow morning.

3 (Deposition adjourned at approximately  
4 5:05 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, David A. Campeau, hereby certify that I  
3 am qualified as a verbatim shorthand reporter; that I  
4 took in stenographic shorthand the foregoing  
5 deposition of EDWARD V. MORSE at the time and place  
6 aforesaid; that the foregoing transcript consisting  
7 of pages 1-347 is a true and correct, full and  
8 complete transcription of said shorthand notes, to  
9 the best of my ability; that the noticing party has  
10 been charged for the original transcript, and that  
11 ordering parties have been charged the same rate for  
12 such copies of the transcript.

13 Dated at Lino Lakes, Minnesota, this 20th  
14 day of September, 1997.

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1 SIGNATURE PAGE

2 I, EDWARD V. MORSE, the deponent, hereby  
3 certify that I have read the foregoing transcript  
4 consisting of pages 1-347, and that said transcript  
5 is a true and correct, full and complete  
6 transcription of my deposition, except per the  
7 attached corrections, if any.

8

9 (Please check one.)

10

11 ☐ Yes, changes were made per the attached  
12 (no.) ☐ pages.

13

14 ☐ No changes were made.

15

16

17

EDWARD V. MORSE

19

20 Sworn and subscribed to before me this day  
21 of , 199\_\_.



22

23

24

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Notary Public

25 My Commission expires:

(DAC)

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